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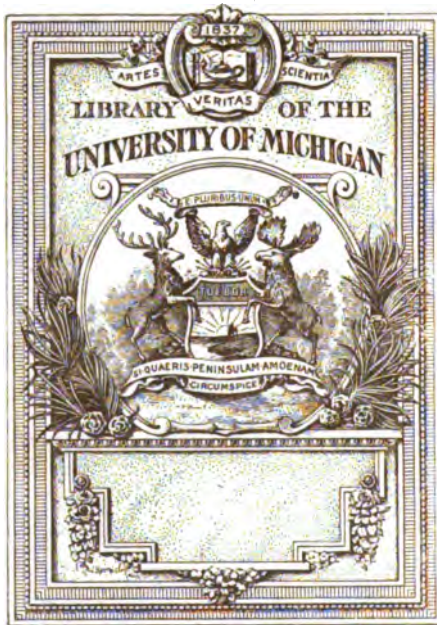
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THE SILESIAN LOAN
AND
FREDERICK THE GREAT

BY THE
RT. HON. SIR ERNEST SATOW
G.C.M.G., LL.D., D.C.L.



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PREFACE

In the latter part of the War of the Austrian Succession a dispute arose between Frederick the Great and the British Government respecting the laws of war at sea, particularly those which govern the definition of contraband and the right of capturing enemy goods in neutral ships. Neither party being willing to give way, Frederick at last announced, and acted on, his intention of retaining the final instalment of a debt due from him to English bondholders, in order to provide compensation for the owners of Prussian ships and cargoes, who he alleged had been unjustly treated by the English prize courts. He presented a long memorial embodying his views, to which the English Government replied, stating the law of nations on these subjects, and justifying their procedure. They maintained also that Frederick had no right to withhold a debt due from him to private persons, by way of reprisals on the British Government. The debt, known as the Silesian Loan, had been originally contracted by the Emperor Charles VI, who paid neither the interest nor the instalments of principal stipulated in the contract. When Maria Theresa was induced by the British Government to make peace with Frederick and cede to him the province of Silesia which he had seized, he undertook to discharge the debt. For several years he paid little or nothing, and made repeated attempts to escape from his obligation. Finally, when it became evident to both parties that a close alliance between them was necessary, in order to preserve Germany as a whole and Hanover in particular from invasion by

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France, they entered into the Treaty of Westminster of January 1756, a few months before the commencement of the Seven Years' War. On this occasion the British Government, as an entirely separate transaction, agreed to pay Frederick a sum equal to about two-thirds of what he had claimed, on condition that he first removed the sequestration of the amount due to the bondholders.

The affair aroused widespread interest at the time. The British Government communicated the documents to friendly Powers, and invited their intervention or assistance. France declined to put pressure on Frederick, and affected to take his side of the argument, although French prize-law was antagonistic to his pretensions. Holland tried to get something for herself out of the dispute. Austria replied that she was not on terms with Frederick, and wandered off into recriminations about the Barrier Treaty. Russia was willing to lend troops against Frederick, if the necessity arose, but demanded an exorbitant price for her services. The Russian Vice-Chancellor hoped incidentally to fill his pockets. Spain declared herself in sympathy with England, but expressed no opinion as to the merits of the controversy.

This *cause célèbre du droit des gens* is mentioned in various historical works and treatises on international law, but the whole facts have never been correctly stated. The *Gentleman's Magazine* started off with several inaccuracies, which were repeated by a succession of authors, until Carlyle took in hand to misrepresent them altogether.

Opportunity has been taken in the following narrative to give some account of Legge's mission to Berlin in 1748 to propose a treaty of alliance, a transaction hardly mentioned by Carlyle.

The documents which have been placed together in the Appendices have, with but one exception, never been printed before. They show how closely international politics and international law are connected with each other.

I take advantage of this occasion to acknowledge my indebtedness to Dr. Fruin and Mr. H. T. Colenbrander, of the Rijksarchief at the Hague, for valuable assistance in procuring copies of documents which were not otherwise available; to Dr. Oppenheim, Whewell Professor of International Law at Cambridge, for the loan of books and helpful suggestions; and to the Rev. Professor T. J. Lawrence, formerly lecturer on International Law at the Naval War College, to Mr. Hubert Hall and Mr. H. E. Headlam of the Public Record Office, and to the authorities of the MSS. department of the British Museum, for facilitating my access to papers in their charge; to Miss E. Mees of the Hague, Mr. W. H. Powell, and Miss Alice J. Mayes for the care with which they have made transcripts for me; to my friend Mr. A. Allan Shand, and lastly to Mr. Percy S. Allen for kindly undertaking to read the proofs of this volume.

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CHAPTER I

ORIGIN OF THE SILESIAN DEBT

DURING the war of the Polish Succession waged by France against Austria, October 1733 to October 1735, the Emperor Charles VI, finding himself short of money for the payment of his troops, applied to George II for permission to borrow £300,000 from British subjects. Licence to that effect was accordingly granted, August 6, 1734, to Count Kinsky,¹ the Emperor's Ambassador to Great Britain. The sum eventually borrowed was £250,000, at seven per cent interest, upon a mortgage of the Emperor's revenues in the Duchy of Silesia,² secured further by the Emperor's bond together with the security of the Estates of Silesia for the repayment of the principal sum. A contract³ was signed on January 7/18, 1734/5, between Count Kinsky on the one side, and Horatio Townsend, Sir Theodore Janssen, Sir John Heathcote, Samuel Holden, and Thomas Gibson on the other, for the loan of £250,000, interest at the rate of seven per cent, payable half-yearly, beginning at the end of six months from the day on which the subscription should be opened, which date was January 10, 1734, o.s. In the year 1740/1 repayment of the principal was to begin, i. e. with the payment of interest due on January 10, 1740/1, ten per cent of the principal was to be paid off, and the like amount in 1741 and 1742; in 1743 and 1744 respectively twenty per cent was to be paid off, and the remaining thirty per cent in 1745. These dates are all of them Old Style. Thus the whole debt was to be repaid by January 10, 1746, N. S. It appears also that the Trustees for the bondholders were entitled to a commission of one per cent

Licence to borrow up to £300,000.

Conditions of the loan.

Repayment.

Commission of one per cent.

¹ App. 1.

² App. 2.

³ App. 3.

on the principal.¹ No interest was ever paid during the lifetime of the Emperor, who died October 20, 1740, some months before the first instalment of principal became due.

NOTE

It will be convenient to show what were the payments made by Frederick at various times :

	<i>Principal.</i>	<i>Interest.</i>
	£	£
1743	70,000	14,700
1749	nil	37,800 *
1750	nil	88,200 †
1751 July	90,000	12,600 ‡
1751 December	45,000	2,625 §

[Koser, *Preussische Staatsschriften*, ii. 496]

leaving £45,000 still due, on which, in 1752, he placed an embargo pending the settlement of his dispute with England respecting the Prussian ships and cargoes captured between the French declaration of war in March 1744, and the peace of Aix-la-Chapelle in 1748.

* Making with the amount paid in 1743 three years' interest on £250,000.

† Seven years' interest on £180,000.

‡ One year's interest on £180,000.

§ This amounts to five months' interest. Six months' interest on £90,000 would have been £3,150.

PAYMENTS OF PRINCIPAL AND INTEREST WHICH SHOULD HAVE BEEN MADE ACCORDING TO THE CONTRACT ENTERED INTO BY COUNT KINSEY ON BEHALF OF THE EMPEROR CHARLES VI.

<i>Principal.</i>	£	<i>Interest (dates n. s.).</i>	£
		July 10, 1735	8,750
		January 10, 1736	8,750
		July 10, 1736	8,750
		January 10, 1737	8,750
		July 10, 1737	8,750
		January 10, 1738	8,750
		July 10, 1738	8,750
		January 10, 1739	8,750
		July 10, 1739	8,750
		January 10, 1740	8,750
		July 10, 1740	8,750
January 10, 1741	25,000	January 10, 1741	8,750
		July 10, 1741	7,875

¹ *Politische Correspondenz Friedrichs des Grossen*, xii. 266.

ORIGIN OF THE SILESIAN DEBT

<i>Principal.</i>		<i>Interest (dates n. s.).</i>	
	£		£
January 10, 1742	25,000	January 10, 1742	7,875
		July 10, 1742	7,000
January 10, 1743	25,000	January 10, 1743	7,000
		July 10, 1743	6,125
January 10, 1744	50,000	January 10, 1744	6,125
		July 10, 1744	4,375
January 10, 1745	50,000	January 10, 1745	4,375
		July 10, 1745	2,625
January 10, 1746	75,000	January 10, 1746	2,625

CHAPTER II

THE SILESIAN DEBT TAKEN OVER BY FREDERICK THE GREAT

Hyndford's mission to Frederick in 1741.

AFTER Frederick had invaded Silesia and made himself master of Breslau, George II sent Lord Hyndford on a mission to him, the object of which was to bring about an accommodation between him and the Queen of Hungary. On May 7, 1741,¹ he had an audience of Frederick at the camp of Mollwitz to present his credentials. Hyndford had no doubt been instructed to mention the interests of the bondholders of the Silesian loan, but his report to Harrington dated May 13 contains no reference to this subject. In the course of the conversation which took place Frederick said he remembered to have promised to provide for the capital and interest of the debt charged on Silesia, but it would be reasonable that the burden should be shared by the House of Austria, the latter bearing so much of the debt as would be in proportion to the portion of Silesia which Austria retained.²

Frederick's promise to pay principal and interest.

Draft treaty containing article undertaking responsibility for the debt.

On October 9 an agreement was signed by Hyndford at Klein-Schnellendorf in Frederick's presence, recording the terms secretly agreed upon for the cession of Lower Silesia, including the town of Neisse,³ and on November 12, n. s.,⁴ Hyndford reports the receipt from Robinson at Pressburg of a draft treaty between Maria Theresa and Frederick, consisting mainly of the articles of Klein-Schnellendorf, with the addition of articles concerning Frederick's engagements for the debts on Silesia, the maintenance of the Roman Catholic religion, &c.

Frederick desires to shirk.

In March or April of 1742,⁵ in a memorandum on the

¹ Hyndford to Harrington, May 13, n. s., 1741, Record Office, S. P. For., Prussia, vol. 50.

² Pol. Cor. i. 239. Précis de l'Audience, drawn up by Podewils.

³ Ibid. i. 371.

⁴ App. 4. Record Office, S. P. For., Prussia, vol. 51. ⁵ Pol. Cor. ii. 99.

reasons which would impel him to remain allied with France, rather than to make peace with Maria Theresa (on the pretext that Austria by divulging the articles of Klein-Schnellendorf had broken faith, he had renewed the war), Frederick notes that in the former case he would not have to pay to the Dutch and English the sums they had advanced to the deceased Emperor on the security of Silesia. A dispatch from Carteret to Hyndford of March 30, 1742, speaks of sending him 'the paper you desired from the proprietors of the Silesian loan, whose interests the King has recommended to you, and I should be extremely glad to hear that it has been in your power to do them any service' (B. M. Add. MSS. 22531). On April 22, Eichel, in writing to Podewils by Frederick's orders,¹ remarks that if he took Upper Silesia as well as the Lower part of the province, the whole burden of the debt would fall on him, otherwise it would be divided *pro rata*, but of that it was unnecessary to speak for the moment. Five days later Frederick was writing directly to Podewils to assure Hyndford that he would not find him making difficulties regarding either the money or the interests of England.² On May 9 he instructs Podewils, in case Hyndford spoke to him on the subject of Upper Silesia, to endeavour to avoid the payment of the debt on the province, but in any case to contrive to undertake only for the English debt, and not for those due to Holland and Brabant.³ Next day he tells him through Eichel to do his best to get rid of as much of this obligation as he decently can, so that the almost intolerable burden shall not fall on his shoulders alone.⁴ On May 21 Carteret sent to Hyndford an attested copy of the loan agreement.⁵ On June 8 Frederick repeats to Podewils for Hyndford's information that he would pay the debts of Lower Silesia to England, but that he does

¹ Ibid. ii. 126.

² Ibid. 154.

³ British Museum Add. MSS., *ut supra*.

⁴ Ibid. 136.

⁵ Ibid. 156.

not think it would be fair to make him pay on behalf of Upper Silesia, if he does not claim it ; if, however, England would obtain Pardubitz and Königgrätz for him he would bear that charge.¹ On June 12 he says that of the debts charged on Silesia he will pay those which are due to the English merchants in the manner proposed by Hyndford.² However, by the preliminaries of Breslau, signed the previous day, Frederick acquired both Upper and Lower Silesia, with certain exceptions, together with the town and county of Glatz, and by Article VII the King of Prussia undertook the 'whole payment of the sum hypothecated on Silesia to the English merchants, in accordance with the contract signed in London January 7, 1734/5'.³ And on June 13 Hyndford writes to Carteret acknowledging the receipt of the loan agreement, and adds, 'I hope the Contents and Inclosures of This, will convince the Proprietors of that Loan that I have taken Sufficient Care of their Interest, and I make no doubt your Lord^{sh} will immediately acquaint Them with it, lest the Agent from this Court should buy up the shares in that Loan at a great Discount, to the Prejudice of the Gentlemen who are original Proprietors.'

Prelimi-
naries of
Breslau.

Payment
under-
taken out
of grati-
tude for
English
diplomatic
assis-
tance.

Treaty of
Berlin.

On June 26 Eichel writes to Podewils by order, that Frederick will faithfully (*sanctè*) fulfil what he has undertaken with regard to the English debt ; but that he has undertaken it solely out of gratitude for the mediation undertaken by the English ministry and for the trouble they had had.⁴

The preliminaries were converted into a definitive treaty of peace, signed at Berlin July 28, 1742, by Podewils and Hyndford. It included also as parties Great Britain, Hanover, Russia, Denmark, Holland, Brunswick, and Saxony. Article IX⁵ provides for the payment of the

¹ *Pol. Cor.* ii. 187.

² *Ibid.* 196.

³ *S. P. For., Foreign Ministers in England*, vol. 49 ; App. 5.

⁴ *Pol. Cor.* ii. 215.

⁵ *S. P. For., Foreign Ministers in England*, vol. 49 ; App. 6.

sums hypothecated on Silesia to English and Dutch subjects, with a proviso that from the latter should be deducted what was due to Frederick by Holland. Frederick's ratification of the treaty also expressly ratified this Article.¹

On October 13, 1742, Podewils reports² that in accordance with Frederick's orders transmitted by Eichel he has informed Hyndford that Frederick will pay, in July 1743 at latest, 500,000 thalers to the English capitalists, and suggests that an earlier payment would result in a considerable saving in the way of interest. Frederick had destined this sum to the cancellation of 70 bonds = £70,000, and three years' interest on each, in all £84,700. The amounts due up to July 10, 1743, inclusive, according to the original contract, were £75,000 on account of principal and £140,875 for interest, nothing having been paid on account of either since the debt was contracted. The creditors, however, did not claim from Frederick the interest due up to 1740, but according even to this view the amount due from him on account of interest was £62,500.³ The money was actually paid over, but the directors of the London consortium refused to give a receipt in the desired form, on the ground that they must distribute equally among the bondholders all that they received in payment of the debt.⁴ His ministers advised Frederick that if his wishes in this respect were not complied with, he should consider himself free from any obligation to pay interest on part of the principal sum which he held in readiness for repayment.⁵ His reply to this suggestion is characteristic: '(Je vous prie, Monsieur, mêlez-vous de vos affaires; avez-vous le sens commun de me proposer pareille chose dans les termes où nous sommes.)'

Payment
of
500,000
thalers by
Frederick.

Repeated assurances were given from time to time

¹ App. 7.

² Ibid. xii. 267, foot-note.

³ Ibid. 220.

⁴ *Pol. Cor.* ii. 280.

⁵ Ibid. iii. 93.

that this Silesian debt should be paid. Thus, in May 1744, when refusing to furnish the auxiliary troops stipulated for in the defensive alliance of November 1742 between himself and George II, on the ground that Hanover had not been attacked, and that the circumstances showed England to be the aggressor, after admitting that England had performed her part of the bargain, he declared that he would in all particulars fulfil his own undertakings, pay the Silesian debt, and in case England were attacked, come to her aid with 30,000 men.¹ In his dispatch of August 8, 1744, to Andrié, his minister in London, relative to his reasons for taking up arms in support of the Emperor Charles VII, he repeated that he was firmly resolved to fulfil all his engagements with England, so long as she did not sever the bonds which united them, and that he would pay to the last stiver the Silesian debt which he had taken on himself by the treaty of Breslau.² Again, on December 19 he writes to George II: ' . . . je m'acquitterai avec ponctualité du paiement des sommes hypothéquées à la nation anglaise sur la Silésie, dont je me suis chargé par le traité de Breslau.'³ This he qualifies in a letter of the same date to Andrié: ' à quoi vous ajouterez les protestations les plus persuasives que je m'en acquitterai avec toute l'exactitude imaginable, aussitôt que la grande dépense que j'ai à soutenir dans la crise présente des affaires sera passée, et que la cour britannique se sera favorablement déclarée par rapport au remplissement de la garantie qu'elle m'avait promise pour la Silésie.'⁴

Renewed
under-
taking in
1745 ;

The undertaking to pay the debt was renewed by Article II of the peace of Dresden, between Frederick and Maria Theresa, on December 25, 1745, at the close of the second Silesian War.

and
again in
1746.

In 1746 negotiations were carried on for a renewal of the guarantee given by George II to Frederick of the

¹ *Pol. Cor.* iii. 142.

² *Preussische Staatsschriften*, i. 580 and 610.

³ *Pol. Cor.* iii. 360.

⁴ *Ibid.* 362.

cession, made by Maria Theresa to the latter, of Silesia and the county of Glatz, which were concluded by a declaration on the part of the King of Great Britain and Ireland, and Elector of Hanover, signed at Kensington September 19, 1746, and embodied in an 'Acte d'acceptation' signed by Frederick at Berlin, October 13 of the same year,¹ in which he undertakes in return to execute faithfully the engagements entered into by him with his Britannic Majesty, particularly the treaty of Westminster of 1742, and adds further: 'Nous promettons aussi sur notre Parole Royale, pour Nous, Nos Heritiers, et Successeurs, d'exécuter ponctuellement, et au plus tôt l'article neuvieme du Traité sus-mentionné de Berlin, par lequel Nous Nous sommes chargés du Payement des Sommes hypothéquées sur la Silesie. En foi de quoi, &c.'

It must be admitted that the undertaking to pay the Silesian debt appeared to Frederick very onerous, and that he did not scruple to devise means of evading the obligation. The younger Podewils had reported to him early in 1743 that Fagel, the Greffier of Holland, had talked in a fashion to suggest that the Austrians, English, and Dutch were preparing to expel the French from Germany in order to attack Prussia afterwards.² Frederick's comment on this was that if he had any further reason to suspect their designs he would stop the payment of the English debt. In December 1744 he writes to Podewils that the Austrians having invaded the county of Glatz and certain places in Upper Silesia, he is entitled to require of the English the succours stipulated in the treaty [of Westminster, November 1742]. If Parliament proved unfavourable to granting them, he would no longer pay the debts of the deceased Emperor.³ Strange as it may appear in these days, Frederick had only four months previously invaded Bohemia and captured Prague, but he argued that although, as an ally of the Emperor Charles VII, he was entitled to invade Austrian territory, Maria Theresa

Attempts
to evade
the obli-
gation.

¹ App. 8.

² *Pol. Cor.* ii. 338.

³ *Ibid.* iii. 338.

must not in her turn invade his dominions. ' Il faut bien distinguer entre les parties belligérantes et les auxiliaires.' (In June 1743 the English and French, as auxiliaries respectively of Maria Theresa and of Charles VII, had fought at Dettingen, without being at war.) In August 1745 George II was at Hanover, engaged in trying to bring about peace between Frederick and Maria Theresa. To Andrié, who had accompanied the English Court, Frederick sent two alternative sketches of the conditions which he desired to obtain ; in Article 1 of the second he proposed that England, in order to indemnify the King of Prussia for his war-costs, should undertake to pay him one million pounds sterling. To this a note was added, suggesting that some abatement of this sum might be made, if the main part of his proposals were accepted, say to £400,000, a near equivalent to what he had to pay on account of the Silesian debt, and in case Lord Harrington should refuse to entertain the idea, it would be necessary to shape the article so as to transfer the charge for the Silesian debt to the Queen of Hungary.¹

He begins to threaten non-payment.

The first direct indication of a threat of non-payment in order to compel England to acknowledge a Prussian claim is contained in a letter from Eichel to Podewils of December 3, 1747,² conveying Frederick's instructions for Michell (Prussian secretary in London) to await the English reply to a claim for compensation for damage alleged to have been done by the English troops in the lordship of Montfort, a private estate in Holland belonging to Frederick.³ In case it were refused, Michell was to insinuate adroitly to Chesterfield that the King must endeavour to indemnify himself out of the sum still remaining payable on account of the Silesian debt. Shortly after this date, namely on January 29, 1748, instructions are given through Eichel to Podewils to inform Michell that if a satisfactory answer is not returned

¹ *Pol. Cor.* iv. 249.

² *Ibid.* v. 537.

³ *Ibid.* viii. 90.

by Lord Chesterfield to the *pro-memorid* respecting the treatment of Prussian merchant ships (dated December 28/January 7, 1747/8),¹ he is to give Chesterfield clearly to understand that if, contrary to what is hoped and to all the law of nations, the ships of his Majesty's subjects were hindered in their navigation, stopped or brought in, no one could be surprised if he had recourse to the moneys hypothecated on Silesia, and compensated the damage and loss unfairly suffered by his subjects, by a deduction from the Silesian money, of which he was in the contrary case upon the point of arranging to make payment.² As the whole case known as 'the Silesian loan' turns upon the question of the treatment of neutral Prussian ships by English cruisers, the legality of which Frederick disputed, it becomes necessary to begin a new chapter and go back for a few years.

¹ App. 9.

² *Pol. Cor.* vi. 21.

CHAPTER III

PRUSSIAN COMPLAINTS OF DEPREDACTIONS COMMITTED BY ENGLISH PRIVATEERS

Outbreak of war between France and England. LOUIS XV declared war against England on March 15, 1744, and the English counter-declaration followed on March 31. Frederick lost no time in instructing Andrié on April 14 to inquire of the English ministry what precisely passed with them for contraband of war, and whether grain, timber, planks, hemp, linseed, textiles, &c., were included, in order that he might warn his subjects and give them the necessary instructions as to the manner in which they should carry on their trade.¹

Carteret's promise as to contraband, and equal treatment of Prussian shipping. Andrié replied in a dispatch of May 29/June 9, 1744, that besides what he had said in the postscript of April 29, he had seen Carteret again that morning, who had reiterated to him that the articles mentioned in Frederick's instructions, such as timber and other materials serving for the construction of ships, cordage, sails, hemp, flax [*lin*], tar, were not regarded as contraband.² That the vessels of Prussian subjects and the Prussian flag would be carefully respected on the part of England, and that there was no intention of troubling them in any way in their trade, provided they were not found to be carrying to the enemies of England the munitions of war specified in all the treaties between the maritime Powers,³ or provisions to a place which might be besieged or blockaded by the English, that in other respects (*d'ailleurs*) the freedom of trade for neutral Powers was the same and on the same footing as in time of peace, that he had explained

¹ *Preussische Staatsschriften*, ii. 452.

² *S. P. For., Foreign Ministers in England*, vol. 48; App. 10. Copy enclosed in Michell's note of March 24/April 4, 1747/8, to Newcastle in the same volume. Text differs from that quoted in *Preuss. Staatsschriften*, ii. 435.

³ This phrase commonly meant England and Holland.

himself in this way to the other neutral maritime Powers, such as Sweden and Denmark, and he repeated it again, requesting the King of Prussia to be convinced that it would never be the intention of England to trouble the trade of Prussian subjects in any manner whatsoever; he hoped that, as it was not the usage in England under such circumstances to give declarations in writing to a neutral Power, Frederick would be satisfied with what declaration he had just made by word of mouth in the name of the King, his master.

In forwarding this document to the Duke of Newcastle in April 1748, Michell calls it 'copie d'une Déclaration que Milord Granville¹ a donnée à Mr. Andrié de la part de Sa Majesté le Roy de la Grande-Bretagne, au commencement de la présente guerre avec la France'.

Neither the instructions to Andrié nor his reports of May 18/29, nor the preceding document are given in the *Politische Correspondenz*. The *Exposition des motifs* of December 1752² states that on the first-mentioned occasion Carteret said that the Prussian flag would be equally respected with that of the other Powers³ allied with England, with the sole exception of vessels which carried munitions of war to the enemies of the British nation. There is no document at the Record Office to show what Carteret said to Andrié. As the discussion was viva voce it is extremely unlikely that any note was taken by Carteret or by a private secretary. No doubt can be raised as to Andrié's having exactly understood what was said to him by Carteret, who was an accomplished linguist, and spoke German fluently.

At the Record Office is preserved a series of written complaints formulated by the Prussian diplomatic representatives in London, but it is incomplete, for it contains

Com-
plaints of
illegal
treat-
ment of
Prussian
ships by
English
private-
teers.

¹ Carteret became Lord Granville October 18, 1744.

² *Preussische Staatsschriften*, ii. 453. See also Chap. VII.

³ *Puissances alliées* would be more exactly rendered by 'friendly Powers'.

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only sixteen cases out of the whole number put forward later, in 1752.¹

The *Heerligheit*.

No. 1. The first of these, dated January 13/24, 1745/6, concerns a cargo of planks, loaded on board the Dutch ship *Heerligheit*, of Kuinder, taken on her voyage from Stettin to Lorient nearly two months earlier, by a privateer. It appears from a later letter of May 27, from Andrié to Lord Harrington, that it had been decided to treat this cargo as conditional contraband and to buy the planks for the Admiralty, and that was accepted as a settlement of the case.

The *Dorothee Sophie*.

No. 2. The *Dorothee Sophie* of Stettin. Complaint dated February 25/March 8, 1745/6. Andrié calls it 'un second navire appartenant aux Habitants de la Ville de Stettin', but there is no trace in any document of a first prize under the Prussian flag. He states that she had carried timber to Bordeaux, and at the time of her capture was on her way to Rotterdam, to load a cargo for the Baltic. From his observation that 'these circumstances sufficiently denote that there was no intention of entering any French port, whether Dunkirk, Calais, or elsewhere, as the English privateer owners perhaps desired to impute', it appears that the prohibition against carrying on coasting trade between the enemy's ports, afterwards known as the 'rule of the war of 1756' was a recognized thing. [This case is No. 14 in the list of claims in respect of Prussian ships, appended to the Memorial of November 23, 1752 (see Chapter VI), and damages were claimed for her detention from December 10, 1745, till August 12, 1746. The list of Prussian ships appended to the Report of the Law Officers enclosed in Newcastle's reply of February 8, 1753, to Michell shows that this ship was restored with freight, according to the Bills of Lading, for goods which were found to be the property of the enemy, and condemned as prize. As the capture was justified by the

¹ S. P. For., *Foreign Ministers in England*, vol. 48.

fact that she was carrying enemy goods, damages for detention were not due.]

No. 3. Complaint, dated December 3/14, 1746, regarding the *Demoiselle Elisabeth* of Wolgast, from Bordeaux, anchored at the Downs in stress of weather, and proceeding to sea again, was boarded on August 21 by an English privateer, which carried off two hogsheads of wine belonging to the cargo, two half-ankers of brandy, one and a half ankers of wine, an anker of vinegar, several utensils belonging to the ship, and even clothing of the crew. It had been found impossible to ascertain the name of the owner of the privateer (*armateur*), but information was furnished by which he could have been identified. No further mention of this case is to be found, and it is not included in either of the lists referred to.

The
Demoiselle
Elisabeth.

No. 4. Complaint, dated December 3/14, 1746, the *Anne Elisabeth* of Hamburg, master Henry Christian Man, cargo Silesian cloth, captured and carried into Dover by a privateer, name and date not mentioned. [This is No. 5 of the list of neutral ships appended to the Prussian memorial. The English answer states that part of the cargo was condemned for want of affidavits as to the property.]

The *Anne*
Elisabeth.

No. 5. Complaint, dated December 3/14, 1746, respecting the ship *Frederick II* of Königsberg, captured November 5/16, on a voyage from Königsberg to Bordeaux, by the privateer *Eagle*, Captain Bazely, and carried into Dover, cargo consisting of hemp and staves. [This is No. 10 of the list of Prussian ships, claim for detention from November 16, 1746, till July 17, 1747. In the Law Officers' list she comes under the heading of cargo, or part of it, condemned as contraband, and not alleged to have been Prussian property, and therefore certainly prize of war. Case similar to No. 2.]

The
Frederick
II.

No. 6. Complaint, dated July 6, 1747, respecting the Dutch ship *Les Deux Sœurs*, master Lammert Gosser, loaded at Rügenwalde in Pomerania, with planks and

The
Dutch
ship *Les*
Deux
Sœurs.

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staves for the account of Greffe of Stettin, a Prussian subject, captured May 12, 1747, by the sloop of war *Otter*, Captain Cust, on a voyage to Lorient. [No further mention of this case in either of the lists referred to.]

The Twee Gebroeders. No. 7. Complaint, dated August 15/26, 1747, respecting the Prussian ship *Twee Gebroeders* of Embden, master Augustinus Augustinus, chartered to Willem van Brienen of Amsterdam, and loaded with free goods. [This is No. 15 of the Prussian list, claim for detention from July 26, 1747, till January 27, 1748. The Law Officers' list shows that she was restored with freight for goods found to be the property of the enemy, and condemned as prize; similar case to No. 2.]

The Eendragt. No. 8. Complaint, dated August 15/26, 1747, Prussian ship *Eendragt* of Embden, loaded at Amsterdam for Bordeaux, with goods declared not to include any contraband, captured off Calais, July 24, by the man-of-war *Greyhound*, Captain Noel, and taken into Dover. The manifest having been carried off, no details of the cargo could be given. [No further mention of this case in either of the lists referred to.]

The Goude Arend. No. 9. Complaint, respecting the Prussian ship *Goude Arend* (or *Aigle d'Or*), master Onne Arends, of the Island of Juist, off Oost Friesland, loaded in June at Rotterdam with free goods for Dunkirk, captured July 24, off Blankenberghe in Flanders, by the privateer *Prince of Orange*, and taken into Dover. [No. 11 of the Prussian list. She was restored with freight for such goods as were found to be the property of the enemy, and condemned as prize. See Law Officers' list.]

The Les Jumeaux. No. 10. Complaint, dated September 14/25, 1747, Prussian ship *Les Jumeaux* (*The Twins*), master Kruth, captured and detained at Plymouth; this complaint had originally been laid August 8/19, the ship's name being erroneously given as the *Rosina*. [In the Prussian list she figures as No. 2, on a voyage from Stettin to Lorient or Brest, and the claim was for ten months'

detention, from August 12, 1747. In the Law Officers' list she is classified as a case where the cargo, or part of it, was condemned as contraband, and not now alleged to have been Prussian property, and therefore certainly prize of war : a similar case to No. 5.]

No. 11. Complaint, dated February 1747/8, respecting the Prussian ship *Soleil doré* (or *d'Or*), master Jacob Redder (Ridder), loaded with rye for Bordeaux, sailed from Königsberg October 11/22, 1747, put into Ramsgate in stress of weather, where she was boarded by the crew of the privateer *Sackville*, Captain Peter Wood, who took the master and quarter-master with the ship's papers to Deal and Dover, where they were examined. [No. 8 of the Prussian list, captured on her way from Königsberg to Bordeaux, and detained five months, from December 27. In the Law Officers' list she is placed in the same category with case No. 5.]

The
*Soleil
doré.*

No. 12. Complaint, presented at the same time as the foregoing, in respect of a Dutch ship, the *Drie Gesusters*, of Lemmer in Friesland, chartered at Amsterdam in September 1746 for the account of Greffe of Stettin, a Prussian subject, to proceed to Rügenwalde in Pomerania, to load timber for Brest or Lorient. May 26, 1747, she was taken off Ushant by the war-ship *Otter*, Captain Cust. The ship was released. On behalf of the cargo it was alleged that by Article 4 of the treaty of 1674, timber such as this cargo consisted of could be conveyed by the subjects of Their High Mightinesses even to enemy ports; that the ship had not on board any of the goods enumerated in Article 3, where it was declared that those alone should be regarded as contraband, and by Article 8 of the said treaty it was expressly declared that everything found on board of ships of the subjects of Their High Mightinesses (excepting only what was declared to be contraband by Article 3) should be held to be free. Even if the cargo had belonged to enemies, it would be free according to that treaty. It must be so all the more as

The *Drie
Gesusters.*

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it belonged to a Prussian subject. The judge, however, had condemned the cargo, on the following grounds: although it is permitted by the treaty of 1674 to a Dutch ship to carry such a cargo from a Dutch port to an enemy port, a Dutch ship is not at liberty to go and take such a cargo in a Prussian port to carry it on Prussian account into a French port, and as a Prussian vessel loaded with timber for Brest or Lorient would have been subject to confiscation, because it did not enjoy the privilege of a Dutch ship, in the same way a Dutch ship could not impart privilege to a cargo like that, which by His Majesty's instructions is declared contraband as being destined for the enemy, for if that were permitted and could be done, all the other neutral Powers who cannot furnish munitions of war, &c., to the enemy by their own ships, would be able to make use of Dutch ships to carry on a trade useful to the enemy and prejudicial to England, and for these reasons and divers others, and not finding that this case was within the treaty, nor accorded with the spirit and intention of the said treaty, he concludes that these goods are liable to confiscation, and consequently he condemns them as good prize, &c. He dispensed the captor from paying the freight which the owners of the ship had lost, besides the considerable costs to which they had been put. They have strongly murmured, but have not considered it advisable to appeal, because the object was not considerable enough to bear the exorbitant costs which must be incurred in the appeal, but they flatter themselves that if the cargo is restored, the captor will also be condemned to pay the freight and the costs he has occasioned. Greffe has appealed to the superior court of commissioners appointed to examine and decide in last resort the prize cases appealed, and he asks that he may be paid for his cargo of wood at the price for which he had sold it for delivery at Lorient, in accordance with the invoice (*facture*), and that he will be repaid the costs of his claim in the Admiralty Court and those he is obliged

to incur in the superior court. [There is no further mention of this case in either list.]

No. 13. Complaint, laid February 25, 1747/8, respecting the *Anne and Elizabeth* of Stettin, loaded with wine on Dutch account, from Bordeaux to Amsterdam, taken by the privateer *Salamander*, and taken into Rye. [This is No. 3 of the Prussian list. The Law Officers' list shows that the ship and goods were restored, with all costs and damages attending the capture, amounting to £2,801 12s. 1d.]

The Anne and Elizabeth.

No. 14. Complaint, laid the same date, in respect of the *Frau Juliana* of Stettin, loaded with wine on Dutch account, from Bordeaux to Amsterdam, taken by the privateer *Prince of Orange*, and taken into Dover. [No. 5 of the Prussian list. The claim was for five months' detention of the ship. The Law Officers' list reports that the order of the Court was to restore ship and cargo, paying costs. It was one of five cases in which it either appeared that the ship had not the usual evidence of property, according to the custom of the sea; or from the ship's papers or examination of the crew there appeared just reason to presume the cargo to belong to the enemy, and the neutral claimant declined proving his property by strict legal evidence; but obtained restitution on the faith of his own affidavit; and in these cases Courts of Admiralty had always made the like decrees.]

The Frau Juliana.

It is not surprising that Frederick felt he had reason to be dissatisfied with the treatment of Prussian ships and cargoes by the navy and privateers of Great Britain, and that he instructed Andrié, and afterwards the secretary Michell, who took over charge of the Prussian Legation on August 18, 1747, to remind the British Government of the promises given by Carteret at the beginning of the war. Chesterfield renewed that verbal undertaking,¹ to the effect that Prussian subjects could carry into France non-contraband goods as defined by commercial treaties, provided they did this on their own account, and not for

Chesterfield's assurances as to treatment of Prussian shipping.

¹ *Preussische Staatsschriften*, ii. 437. *Pol. Cor.* v. 547.

that of French traders. Not content, however, with this, Frederick instructed Michell to ask for a declaration in writing.¹

Michell's
Note to
Chester-
field.

Accordingly, Michell addressed a Note to Chesterfield on December 28/January 7, 1747/8,² stating that after the verbal assurances given by H.B.M. Minister (Carteret) at the commencement of the war, the King of Prussia had hoped that his flag would be respected, and that he would not find himself obliged to take other steps to this end, as long as the ships of his subjects were not loaded except with goods allowed by the treaties of navigation. But notwithstanding the assurances so often reiterated, and although his subjects had never departed from the rules of lawful commerce for neutral nations, the English marine had not desisted from unjustly seizing Prussian ships, of which several were still detained in ports of the kingdom. In order to obviate these inconveniences, to bridle the licence of the privateers, and to prevent them from committing outrages against the subjects of a neutral Power, the King had ordered him to make proper remonstrances, so that orders might be given, under pain of severe penalties, to the commanders of English armed ships to respect his flag, and to leave navigation free to the ships of his subjects, without troubling or molesting them under the pretext of visit, and to content themselves with the simple exhibition of the passes and other papers which the custom of the sea authorizes the commanders of vessels of war and privateers to have shown to them. In order to better reassure the trading subjects of the King against the fears with which past experience must naturally inspire them, that it may please his Majesty the King of Great Britain to declare formally and in writing that it is not his intention to hinder nor interrupt the navigation of Prussian subjects to French or Spanish ports, but that they will be permitted to carry on their trade

¹ *Pol. Cor.* v. 555.

² *S. P. For., Foreign Ministers in England*, vol. 48, App. 9.

thither on the same footing on which the law of nations and the customs of the sea authorize neutral nations to exercise it ; that in order to ascertain the state of their cargo, the distinction between goods be observed exactly which was established by Articles 19 and 20 of the commercial treaty concluded in April 1713, between England and France, and by Articles 15, 16, and 17 of the commercial treaty of 1739, between France and Holland,¹ and that only those goods be reputed contraband which are expressly declared to be such by the Articles above mentioned. So that as soon as the captains and masters of ships flying his Majesty's flag and provided with his passes cause it to appear by their papers that they are not loaded with such goods, they may continue their voyage without any hindrance whatsoever, and without forcing them to turn aside or carrying them into English ports, or obliging them to anchor there on the pretext of further visit or other proceeding of that kind. As what has now been represented to his lordship on the part of the King his master is in exact conformity with the law of nations and with the privileges to which the subjects of neutral and friendly nations are entitled, his Majesty expects that Great Britain will not refuse to him a written declaration based on grounds so just as those above detailed ; and further that prompt redress will be accorded to the just complaints of his Majesty's subjects respecting the outrages which have been inflicted on them by the English marine, by procuring for them equitable compensation for the losses, expenses, and damages which the unjust detention or confiscation of their ships and goods may have caused.

Chesterfield's reply of January 5, 1747,² O. S. (January Chesterfield's
reply.

¹ See text of these articles in a foot-note to App. 9.

² *Preussische Staatsschriften*, ii. 438, foot-note. Full text in *The Duke of Newcastle's Letter, &c.*, London, Owen, 1753, 4to, p. 30; 8vo. p. 21, English translation. *Collectanea Juridica*, Lond. 1791, vol. i, p. 129. *Cabinet Library of Scarce and Celebrated Tracts*, vol. 1, International Law, 1837, p. 68. See also p. 91.

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Frederick's dissatisfaction.

16, 1748, N. S.), contained a passage reminding Frederick that no treaty had ever existed between England and Prussia, regulating the manner in which their commerce was to be carried on, such as actually subsisted between Great Britain and certain neutral States, but this fact had never prevented Prussian subjects being favoured by England in regard to their navigation as much as other neutral nations, and that being the case, it could not be supposed that Frederick had an idea of demanding distinctions, much less preferences, in favour of his subjects. This was considered 'extremely vague and unsatisfactory',¹ and Frederick gave instructions to reply that he could not allow any wider definition of contraband than powder, arms, cannon and cannon-balls,² and to let Chesterfield clearly understand that recourse would be had to the balance due on the Silesian loan.³ Michell spoke to Chesterfield,⁴ who seems to have expressed a hope that the forthcoming *pro-memoria* would be framed in such a tone as to be acceptable, but on February 6, O. S., he left office, and was succeeded by Newcastle.⁵ Frederick then gave orders to refrain from its presentation, until he should learn what Legge, who had been appointed envoy and minister to the Court of Berlin, might have to say to him on the subject. In the meantime, he resolved to send Klinggräff to England on a special mission with a four-fold object: first, of getting the interest on the loan reduced; second, to maintain the right of Prussian subjects to navigate freely, unhindered by English privateers; third, if, as he suspected, George II aimed at the secularization and acquisition of the bishoprics of Osnabrück and Hildesheim, to get him in return to take the payment of the Silesian loan on himself; fourth, if the

Klinggräff to be sent to England.

¹ *Pol. Cor.* vi. 22.

² *Ibid.* 21, 25.

³ See above, p. 2.

⁴ *Pol. Cor.* vi. 53.

⁵ *Letters*, ed. Lord Mahon, iii. 251. Newcastle handed over the Secretaryship of State for the Southern Department to Bedford, taking the Northern Department himself.

English ministry proposed to conclude a close alliance with him as soon as the war with France came to an end, to reply that he would enter into such an alliance with much pleasure.¹ Klinggräff was in the first place sent to Hanover at the end of May or beginning of June, as George II was expected there, specially to ascertain what prospect there was of an alliance. Newcastle got there about June 25. When it finally proved that the influence of the Hanoverian ministers had interposed an insurmountable obstacle to the realization of this idea, Klinggräff was instructed to continue his journey to London, where he seems to have arrived between November 22 and December 5. Michell, who had been left in charge in London when Andrié came away, was instructed from time to time to press the demand for justice to Prussian ship-owners and merchants.² He reported November 22, 1748,³ that Bedford (in charge of the Northern Department as well as his own, during Newcastle's absence in Hanover with the King) had deferred the discussion of the question until Newcastle's return, but had added that if the matter depended on him alone, he would be willing that the British Government should pay the losses of Prussian subjects rather than oblige Frederick to put his resolve into execution, but he was afraid that the King and Newcastle were not of the same opinion, because then the other neutral Powers would make the same demand in virtue of their treaties with the English crown ; whereas Frederick had only a [verbal] declaration of the King and his ministers to go upon, which according to the constitution was not enough. Frederick ordered instructions to be sent to Klinggräff to the effect that no one could blame him for compensating his subjects, who had suffered at the hands of private individuals, at the cost of other English subjects.

Bedford's
concilia-
tory atti-
tude.

¹ *Pol. Cor.* vi. 58.

² *Ibid.* 64, 78, 187, 194, 245, 285.

³ *Ibid.* 305.

CHAPTER IV

LEGGE'S MISSION TO BERLIN IN 1748, AND HIS UNFAVOURABLE OPINION OF THE ENGLISH PRIVATEERS. SIR CHARLES HANBURY WILLIAMS'S MISSION IN 1750

Legge's instructions to propose an alliance.

As noted in the last chapter, Legge had been appointed envoy extraordinary and minister plenipotentiary to Berlin, where he arrived on April 27. His instructions, dated February 12, 1747/8,¹ were in essence to assure Frederick the Great that as King George had 'nothing more sincerely at heart than to cultivate the most sincere and intimate union with him for the reciprocal advantage of our two Royal Familys and for the general good of Europe, and that of the Protestant Cause in particular, so We are desirous to enter with Him into the closest Concert of Measures, for the obtaining the desireable Ends abovementioned'. This subject was further developed in the secret instructions to Legge of the same date.² Frederick, as we have seen, was very willing to conclude an alliance with England. In vol. vi of the *Politische Correspondenz*³ there are numerous references to this subject, and there is an interesting report from Legge to Newcastle⁴ of July 1/12 which throws a sidelight on the King of Prussia's inclinations. The discussions seem to have gone on satisfactorily for some months, until Legge went to Hanover for a few days at the end of July, and after his return the negotiations were silently dropped.

To urge payment of the Silesian debt.

The other important point in his written instructions was the repayment of the Silesian loan, which had suffered interruption since 1743. He probably had also received verbal instructions to discuss the question of the captured Prussian ships, for in the course of a long report to New-

¹ App. 11.

² App. 12.

³ pp. 100, 104, 108, 112, 113, 122, 126, 130, 138, 149, 162, 170, 186, 193.

⁴ App. 13.

castle of April 30 he says : ' I had almost forgotten to acquaint your Grace that in all the opportunity I had of talking with the King of Prussia, he never once mentioned the taking and detaining of his ships ; tho' I was told by his ministers here, that a great part of the conversation would turn upon that subject ; and I am apt to think great pains have been taken by them and their friends in France to make the matter, if possible, a cause of quarrel between Great Britain and Prussia. . . . Before I set out for Potsdam Mons^r Mardefeld told me he had the King's orders to assure me that the Silesia debt should be paid with the utmost exactness.'¹ Frederick had given these instructions to Mardefeld on May 5, N.S.²

In a ciphered dispatch to Newcastle of June 11/22³ Legge reverts to the alarm of the Prussian ministers and business men at the strong symptoms of an approaching union between Prussia and the Maritime Powers. Their plan of operations was to procure the presentation of a petition to the King of Prussia, complaining of the deprivations of the English privateers, and stating the amount of their losses. This they expected would stimulate Frederick's resentment, and they held that if the claims were not satisfied on demand they ought to be recovered from the Silesian loan. Legge, however, was of opinion that even if the petition reached his Prussian Majesty's ears, it would have no effect, as he believed Frederick would not suffer the loan to be touched, since the latter knew that its payment was the condition *sine quâ non* of the guarantee of Silesia for which he acknowledged himself to be indebted to Great Britain. ' At the same time I cannot help declaring to your Grace that I believe in some instances our Privateers have in general transgressed the bounds of fair war, and degenerated into something nighly related to Pyracy.' He then enclosed copies of papers relating to some recent cases (II and I3

Anti-English intrigues.

Payment was, however, a condition of the guarantee of Silesia.

Misconduct of privateers.

¹ *S. P. For., Prussia*, vol. 64.

² *Pol. Cor.* vi. 94.

³ Record Office, *S. P. For., Prussia*, vol. 64.

of those presented by Michell, and No. 18 of the list of Prussian ships attached to the *Exposition des Motifs*), and suggested that if some speedy relief could be given in these instances, it would have a good effect towards appeasing the merchants, 'and take out of our enemies' hands the only weapon they have to make use of against us.' Legge had expressed himself in the same conciliatory sense to Mardefeld, as appears from a letter of Frederick of June 16.¹ In a further dispatch of June 14/25 Legge adds: 'And tho' perhaps all the proceedings of our privateers would not bear a very scrupulous examination . . .' In answer to Legge's dispatch of June 11/22 Bedford wrote on June 24, O. S.,² that he had received the King's orders to accelerate the cases referred to as much as possible. It was intended to make an addition to the number of judges for trying prize cases. On August 8/19³ Legge wrote again about the case of the *Petit David* (No. 18), in which two privateers appear to have behaved disgracefully. The first stopped the Prussian ship, and carried off her papers. Another captured her and took her into Liverpool. The unfortunate captain was thus deprived of the documents on which he would rely to set up his defence to the claim of the privateers. He pointed out that if the allegations made proved to be true, and no remedy could be had, 'Your Grace plainly sees to what a length piracy is carried, and that our Privateers would have nothing to do, but by hunting in couples, to make, and in consequence to prove every ship upon the Ocean a lawfull prize.' His representations produced a certain amount of effect on Bedford, who replied (August 26)⁴ that the papers having now arrived, he would immediately recommend the case to the judge of the High Court of Admiralty.⁵ He added, rather sarcastically, that Michell advocated the causes recommended to him-

¹ *Pol. Cor.* vi. 141.

² App. 15.

³ The *Petit David* was released September 27, 1748.

⁴ App. 14.

⁵ App. 16.

by the Court of Berlin with as much assiduity as if he were the owner of the ships concerned, and that he could not admit that the Court of Admiralty was to blame for the delays. On September 2¹ Bedford wrote again to him recounting a conversation with Michell relative to the compensation expected by the King of Prussia for those of his subjects whose property had been condemned by the Prize Courts, in derogation of the verbal declaration made by Carteret to Andrié at the outbreak of the war. He had denied that this claim was in any way justly founded, but at any rate it could not be considered until the cases had been finally decided, when the whole demands might be presented together.

Compen-
sation
expected
by Frede-
rick.

Legge wrote on September 3/14² to Newcastle, who was still at Hanover, about the unjustifiable conduct of English privateers, in which matter he had found that Newcastle's sentiments agreed with his own. 'I believe in some instances what they have done has fallen little short of downright piracy.' He stated that the French sympathizers at Berlin had been diligently stirring up the merchants and forwarding their complaints to the King of Prussia, so that, according to information he had received, orders would be sent very soon (if they had not already gone) to recall all Prussian subjects who had prize-court cases pending in England. On their return the King would erect a commission³ to examine and establish their respective losses. In a further letter to Newcastle, of September 17/28,⁴ enclosing papers that had been communicated to him by Podewils respecting the case of the *Petit David*, Legge said: 'The outrages committed by our privateers, who upon the apprehension of an approaching [*sic*] peace have degenerated into mere pirates, are I am afraid undeniable, and the delays in point of form necessarily attending a cause before the

¹ App. 17.

² App. 18.

³ This Commission was not set up till November 1751.

⁴ App. 19.

Threat of applying balance of debt to indemnifying Prussian subjects.

Admiralty Court are such as may very possibly wear out the patience of a foreigner ; especially if he thinks his ship has been unjustly taken.' Podewils' memorandum on this case demands not only full compensation for the owners (who were Frederick's bankers), but also the punishment of the offenders ; in default of this the King would cause this case, and the others complained of, to be tried by his own courts, and would compensate them out of the money due on the Silesian debt. Legge, in his covering letter, reports that he had protested to Podewils against touching ' so sacred a fund, so secured by treaty, and so much the condition of every Guaranty His Majesty had given '.

Case of the *Petit David*.

Bedford, on September 27,¹ had sent him an extract of a letter from Sir Henry Penrice,² alleging that the *Petit David* had made two previous voyages, one from Stettin to Lorient with ship-timber, then to Bordeaux with goods on account of French merchants, and that the voyage on which she was taken was for Dunkirk with French goods on account of French subjects. In reply to this letter, Legge wrote on October 12/23³ that the case differed greatly from what it had been represented to be by the proprietors, namely that there was nothing contraband on board, but that the cargo was Prussian property. He points out that when the vessel was taken she had no contraband on board, and that she could not be condemned on the ground of having carried contraband on a previous voyage. As to the ownership of the cargo, that question would have to be determined by legal proof. The Prussians, he said, seemed to admit the doctrine that enemy's property on board a neutral ship was lawful prize, as they rested their case on the denial of all French property in the cargo. He had decided, he said, to leave the matter untouched until he received further orders.

Enemy property in neutral ship.

¹ App. 20.

² A judge of the Admiralty Court. His name does not occur in the *Dictionary of National Biography*.

³ App. 21.

The ship was released, as above noted, on September 27,¹ but it would appear from the list A of Prussian ships in Appendix 34 that the Prussian ownership of the cargo was always maintained; improbable as it must have seemed that wine and brandy transported from one French port to another were the property of a Prussian.

Bedford wrote to Legge on October 11, o.s.,² relating another conversation with Michell, and enclosing correspondence with the Admiralty Court about the case of the *Petit David*, to show that no avoidable delay had taken place in giving judgement. He further enclosed copy of Andrié's dispatch to Frederick of May 29, 1744, containing a précis of the conversation between Andrié and Carteret, on which the Prussian demand for compensation mainly rested. He had replied to Michell that he knew nothing of any such verbal declaration; which was said to have been given before the writer became Secretary of State. He imagined, however, that there must have been some mistake on Andrié's part, as he did not apprehend that a Judge of the Court of Admiralty could take any cognizance of such a verbal declaration, the judge being obliged to conform himself to the Law of Nations, as being the only rule the Court had to guide itself by, except with relations to Powers with whom marine treaties subsisted. Bedford continued by suggesting that any complaints of illegal captures should be carefully investigated by the Prussian authorities before they were sent over to England, adding: 'I do not pretend to disculpate the Proceedings of our Privateers, I believe in many cases they have been highly blameable, but I can venture to affirm on the other Hand, that Complaints are too easily received at the Court of Berlin, upon the bare Allegations of those Merchants, who have carried on during the War an illicit Trade, and have lent their names to cover the Effects of his Majesty's Enemies from being seized by his Ships of War and Privateers.' Lastly, with

Carteret's
assur-
ances of
1744
ignored
by
Bedford.

¹ p. 26 n.

² App. 22.

reference to Podewils' *pro-memoria* given to Legge, he had told Michell that he was excessively surprised to find that the King of Prussia proposed to indemnify his subjects out of the Silesian loan, and that he could take upon himself to say that the King would always look on the fulfilment of the Prussian King's engagements in regard to that loan as the condition upon which that Duchy was guaranteed to him, and that the violation of the condition would of course annul the guarantee. This letter was forwarded under flying seal to Newcastle.

Legge disagrees with Bedford's view of the matter. A Secretary of State's word binds his Government.

Bedford's attempt to repudiate the assurance given by his predecessor in 1744 drew from Legge a vigorous remonstrance. In a letter of October 28/November 8¹ he observes that no declaration of a Minister of State could be regarded as sufficient authority on which to found a doctrine of *No search* (which was what Frederick appears to have understood by Carteret's assurances in 1744²), that such a declaration could never have the force of a treaty of commerce, much less of an Act of Parliament, and could not be taken cognizance of by the Judge of the Admiralty Court. Having admitted so much, he proceeds to suggest that a foreign diplomatist is not supposed to understand the English constitution, and must take it for granted that a Declaration of a Secretary of State is conformable to law; for if the contrary is supposed, there is an end of all confidence, and consequently of all intercourse between the King's ministers and the representatives of foreign Powers. If we were to plead at any foreign Court the insufficiency (according to the laws of England) of a declaration made by the Secretary of State, the answer would be that this is a domestic matter, and that if they have been led into error by a declaration which had no validity, the person who made it ought to pay the damage, and not those who acted upon it. After reading Andrié's letter very attentively, if his report of the conversation is fairly given, it is evident that Prussian

¹ App. 23.

² See App. 10.

subjects were put by it on the same footing as the Dutch by the treaty of 1674. He adds : ' That our privateers have been guilty of illegal practices, I am strongly of opinion with your Grace,' and he suggests that when ships laden with perishable commodities have been taken and detained for many months before the case is heard, and if in the end judgement is given against the captor, full compensation for damage to the cargo, the ship's expenses, and their law costs ought to be awarded to the owners.

A portion of this dispatch is devoted to reporting his action with regard to a minute of the Lords Justices ¹ of October 6, of which he had been instructed to hand a copy to the Prussian ministers. This was to the effect that the King's guarantee of Silesia, given to Frederick the Great, entirely depended on his Prussian Majesty's fulfilling his engagements with regard to the Silesian loan. Podewils had told him that orders had been sent to Michell to declare Frederick's intention of fulfilling those engagements with the utmost punctuality, but that he flattered himself on the other hand that equity would be shown in compensating the unjust losses of his subjects. Frederick, on receiving the report from Podewils and Mardefeld of the communication made by Legge, ² made the following comment : ' That 's all right. I will religiously observe all the engagements I have made to England. But the declaration I have had made with regard to justice and compensation due to my merchants, has nothing to do with our other engagements, but I owe the same protection to my subjects that they give to theirs, who have claims on Silesia. It is quite clear that in spite of all my solicitations, my subjects who have been insulted by English privateers have been neither helped nor compensated. I can find no other means of helping them to their own than the Silesian mortgage, if I am obliged to have recourse to such-like. If they would only

King George's guarantee of Silesia: minute of the Lords Justices.

Frederick denies the connexion between payment of the debt and the guarantee.

¹ App. 24.

² Pol. Cor. vi. 280.

do justice to my poor subjects, all this wrangle would be needless, and I would fulfil every engagement I have made to the English. Count Podewils should say this politely to Legge, and also send suitable instructions to Michell.'

Podewils' language less peremptory.

Legge reported in a dispatch of November 1/12¹ that he had received Frederick's message through Podewils, who somewhat exceeded his instructions by limiting the demand for indemnification to such Prussian merchants as had neither carried contraband nor lent their names to cover French property; but it was asked for to cover the expenses to which they had been put and the losses they had suffered in respect to their cargoes by long detention in England, and that Frederick was the more authorized to expect this, because he had received the most positive assurances that the trade of his subjects should not be molested, provided they did not deal in contraband. Podewils also added, as from himself, that the strictest orders had been given by Frederick to all merchants to refrain from dealing in merchandise on French account, and that if any of the goods now in dispute were proved to be French property, it was not expected that they should be restored.

Heerlichkeit, of Kuinder, again mentioned.

Podewils had mentioned a case in which, as he said, £800 compensation had been given to a Prussian merchant in regard to a cargo, which was seized and afterwards acquitted as not being found to be contraband. Bedford replied (November 15) giving the correct version of the case in question.² It was that of the ship *Heerlichkeit*, of Kuinder (Case No. 1, p. 14), where a lading of planks was brought in for pre-emption, as being naval stores; but as the ship turned out to be Dutch and the lading Prussian, this could not be done, because the navigation laws prohibited the importation in foreign ships of produce of any other country than their own, and as no right of seizure was attempted to be proved,

¹ App. 25.

² App. 26.

the sum of £766 was awarded for demurrage and damages.

The correspondence closes with a letter from Newcastle to Legge of November 6/17 acquainting him that the King much approved the manner in which he had executed his Majesty's orders relating to the ' guaranty of Silesia and Glatz which is the reciprocal performance of His Prussian Majesty's Engagement relating to the Silesian loan '.

Legge took leave towards the end of December, and the post of envoy at Berlin was left vacant until Sir Charles Hanbury Williams, a famous wit and writer of *vers de société*, was appointed in 1750. The instructions he received regarding the payment of the Silesian loan were word for word the same as those given to Legge. He did not remain long at Berlin. Having arrived there about the middle of July, he almost immediately had orders to proceed to Warsaw on a mission to the King of Poland, Elector of Saxony, and did not return till some time in October. He appears to have lost no opportunity of rendering himself disagreeable to Frederick, who in November wrote to Michell to complain to Newcastle of the indecent language indulged by him in public regarding the sovereign to whom he was accredited. These representations led to Williams's recall in February 1751,¹ and he went back, after his farewell audience of March 4, to his former post at Dresden ' full of venom and rage '. No further appointment to Berlin took place until Andrew Mitchell was accredited to the King of Prussia in 1756, after the signature of the Convention of Westminster.

Legge succeeded by Sir Charles Hanbury Williams, who makes himself offensive to Frederick.

¹ *Pol. Cor.* viii. 286.

CHAPTER V

KLINGGRÄFF'S MISSION TO LONDON. SUBSEQUENT REPRESENTATIONS MADE THROUGH MICHELL

Frederick changes his mind, but doubts wisdom of paying away so much money in present circumstances.

BUT Frederick now changed his mind.¹ It had been reported by his minister at Paris that since the peace the policy of the French Government was to establish an *entente* with England, and, knowing the weakness of the French Court, he was convinced that this desire would induce them to push their complaisance so far that before another year elapsed the English would dominate European politics, and it would be necessary to humour them. He therefore desired Klinggräff to abstain from employing the threats he had been instructed to make use of, and to give wherever necessary the most positive assurances that he would unfailingly repay both the principal and interest stipulated.² The only doubt he had in his mind was whether it would be prudent to pay off the debt at a moment when storms were threatening from all sides. The storm he feared was a war declared by Russia with the aid of Austria against Sweden, with which he had an alliance.³ He asked Klinggräff whether, on his conscience and honour, he could advise him to deprive himself of such a large sum (200,000 thalers, which he had ready to pay) at such a critical moment.⁴ Klinggräff seems to have advised him to pay and be done with it, for he writes again (March 1, 1749) and says that he would try to pay off the whole by the following year.⁵ The trustees for the bondholders then approached Klinggräff, with some sort of statement of claim, as it would appear, in reply to which Frederick said he might promise them 100,000

¹ *Pol. Cor.* vi. 326.

² *Ibid.* 445.

⁴ *Ibid.* 369.

³ *Ibid.* 352.

⁵ *Ibid.* 397.

thalers by the beginning of June, an equal amount at the end of July, and the balance of the debt in two years' time.¹ Later on he promised 200,000 thalers at the middle of July, 300,000 more in July 1750, 500,000 in July 1751, and the balance in July 1752.²

In July 1749 Klinggräff began to act on his instructions to procure an abatement of the rate of interest, and proposed to the trustees to pay off in September the arrears of interest at seven per cent, on condition of their accepting four per cent for the future.³ Frederick approved of this, although he was reluctant to part with such a large sum of money, as the state of northern politics still caused him anxiety. All the same, he encouraged his agent to proceed with the negotiation, and Klinggräff forwarded to the trustees on September 1 a definite written proposal,⁴ offering to pay off the arrears, i. e. nine years of interest, by July 10, 1750, if they would agree to the rate being diminished to three and a half per cent from July 1749 (which, as he observed, was the interest paid on the English Funds), and promising that the principal should be all paid off by July 1753. The bondholders asked for further explanations, which were afforded to them on October 25.⁵ The inducements offered were not such as disposed them to accept, and they appealed to Newcastle to press on Frederick the necessity of fulfilling the original contract.⁶ They pointed out that according to its terms the whole principal ought to have been paid off by January 10, 1745 [O. S. = January 21, 1746, N. S.], from which date they were of opinion that the arrears ought also to bear interest. In a 'state of the case of the proprietors of the Silesian loan'⁷ presented at the same time, they maintained that the whole principal of £250,000, plus nine years' interest = £157,500 up to July 10, 1749, was still due to them. In this statement they ignored the £84,700 said to have been paid

Klinggräff's proposals for reduction of the rate of interest.

Case of the bondholders.

¹ Ibid. vi. 429.

² Ibid. 563.

³ Ibid. vii. 12.

⁴ App. 27.

⁵ App. 28.

⁶ App. 29.

⁷ App. 2.

to them in 1743. In the accompanying letter addressed to Newcastle, they said there was enough money already in England to pay three years' interest, and that had been pressed on them as an inducement to enter into a new agreement by which the bondholders would sacrifice about £17,000 a year. They therefore asked Newcastle to insist on the payment of the three years' interest, and that the remainder be not delayed.

Failure of Klinggräff's negotiations.

On November 29 and again on December 7 Frederick ordered the three years' interest to be paid.¹ Klinggräff early in December reported that there was no prospect of coming to an arrangement regarding either the debt or his political negotiations,² and this led Frederick to intimate that he would be recalled and a secretary of embassy left in charge. If the English should then desire to make proposals regarding the debt, it would be their turn to speak. In January 1750 Hyndford passed through Berlin on his way back from his embassy to St. Petersburg, and Frederick took the opportunity of informing him that he had made provision for paying off the debt within a period of not more than three years, but as Prussian subjects still had considerable claims against the British Admiralty, for the 'piracies' committed by English privateers, he felt convinced that Hyndford would do all in his power to ensure redress for their losses, all the more that he, Frederick, would greatly regret being obliged to indemnify them himself by deducting the sum required from the payments due on account of the loan.³ In writing to Klinggräff on February 17 he says that it had never been his intention to deduct this amount until the time came for the payment of the last instalment.⁴ Altogether, Frederick's activity in corresponding on this subject during the last six or seven months of Klinggräff's stay in London is remarkable. In a letter of January 27 he had charged his minister with negligence in regard to

Hyndford asked to facilitate payment of compensation.

¹ *Pol. Cor.* vii. 177, 89.

² *Ibid.* 219.

³ *Ibid.* 197.

⁴ *Ibid.* 256.

these claims.¹ Klinggräff replied that he found they had been decided by the courts, with the exception of one case which was before the appeal court, and that he could get no other answer. Frederick consequently, on February 26, ordered that a detailed statement should be sent to him, and this is the first mention of a liquidation that occurs in the correspondence. Seeing that the last of the Prussian ships had been released before the end of 1748 (some of them so far back as 1746 and 1747), and judgement in regard to the cargoes captured on board of neutral ships had also been given before that time, it is strange that no specific claims had been previously advanced, although they had frequently been made the ground of complaint to the British Government. As will be seen later on, their amounts had not yet been ascertained.

The conclusion to which we are led is that Frederick wished to get rid of his obligation in whole, or in part at least, and as long as success seemed possible he refrained from using the threat to deduct the claims of the Prussian ship-owners and merchants; when it turned out that the bondholders would not consent to a reduction of the rate of interest, which after all would not have made such a large difference to the Prussian treasury, he began again to threaten.

George II went over to Hanover in the summer of 1750, Klinggräff being instructed to follow him there, and it was decided that at the end of the King's stay, his mission should be terminated by the usual leave-taking. While he was still at Hanover, he was informed that 477,000 thalers had just (i.e. before August 21) been remitted to the Bank of England for the necessary payments, and he was directed to acquaint Newcastle that Frederick would religiously perform his engagements respecting the debt, in the manner he had promised.²

Remittance of 477,000 thalers, and renewed assurances from Frederick.

Michell, who had again been placed in charge of the Prussian Legation in London, was instructed in November

¹ *Ibid.* 269.

² *Ibid.* viii. 54.

Michell instructed to press the Prussian claim.

Instructions to prepare a detailed statement given by Frederick.

Appointment of a special commission by Frederick, and instructions sent to Michell.

1750 to remind the British Ministry of the Prussian ships unjustly captured, and to ask for fitting redress, with the addition that Frederick hoped justice would be done, so as to avoid its becoming necessary to provide for their indemnification himself.¹ He reported on December 18 that he had addressed himself to Newcastle.² Frederick replied (January 2, 1751) that he should renew his representations from time to time ; that the amounts destined for the discharge of the debt during the current year would be paid, but he would reserve to himself to deduct from the final instalment the sum required to make good to his subjects what was unjustly denied to them.³ In May 1751, orders were given to Podewils to get together, quite unostentatiously, exact information as to the losses suffered, so as to enable the King to make use of the same on the occasion of the final payment in the following year.⁴ In the meantime Michell was to be reminded to recall the matter to the remembrance of the English ministers on every suitable occasion, lest they should imagine that it had been lost sight of. Podewils and Finckenstein were eventually instructed in November that in December, when another instalment was paid, Michell must again apply to the English Ministry for complete indemnification, and also declare that as all Frederick's representations had proved ineffectual, he could no longer refrain from deducting the amount required to indemnify his subjects from the last instalment due.⁵ For that purpose it was his resolve to appoint a special commission to examine the claims and ascertain the exact total. In doing this he would be proceeding just as England had done. If English laws demanded that Prussian subjects should be cited before English courts to have their claims decided, so did Prussian law require him to set up similar

¹ *Pol. Cor.* viii. 170.

² *Ibid.* 210.

³ £90,000 of principal and £12,600 for interest were paid in July of the year 1751, and £45,000 with five months' interest, £2,625, in December, leaving only £45,000 of principal to clear off the whole debt.

⁴ *Pol. Cor.* viii. 365.

⁵ *Ibid.* 536.

courts to examine their claims, and deliver judgements to which he would have to give effect, in accordance with what a *jus retorsionis* founded on the Law of Nature and of Nations involved. Frederick also ordered them to submit for his approval a scheme for the establishment of such a court, and to acquaint Earl Marischal, his minister in Paris, with the whole history of the affair, from first to last, in order that he might be able to communicate the facts to the French Ministry, and so place them in a position to reply, should representations be made to them on the part of England. Cocceji, Frederick's celebrated Grand Chancellor, was directed to co-operate to this end with the Department of Foreign Affairs.¹ The draft instructions for Michell and Earl Marischal were laid before Frederick by his ministers three days later, accompanied by a remonstrance, in which they urged, first, that England would never recognize the competence of the proposed court to inquire into the legality of the captures made by the English marine; second, nor that private persons could be made to suffer reprisals on account of this dispute; third, that the proceeding would be a manifest infraction of the peace of Berlin, and consequently annulled the British guarantee for his possession of Silesia.

Attempt of Prussian Ministers to dissuade Frederick.

Frederick was not moved by these arguments, nor by others which we pass over, not of a legal nature. As he had anticipated, the British Government prepared to put their view of the case before the French Government if the necessity ultimately arose, and on December 12, the day after Michell had executed his instructions, addressed a 'very secret' dispatch to Albemarle,² giving an account of the declaration made verbally by Michell, and enclosing 'an account of what has passed hitherto upon this subject'. The dispatch adds: 'If that Prince should ultimately persist in defalking any Part of the Debt, due upon the Silesian Loan, there can be no doubt, but that

British Government prepares the mind of the French Court.

¹ Ibid. 541.

² App. 30.; *S. P. For., France*, vol. 242.

His Majesty's Guaranty of Silesia, will be entirely null and void ; as the satisfaction of the sums raised for the security of that Dutchy, was an express condition, of It.'

Michell had inquired whether he should give a written note to Newcastle, embodying his announcement of December 11, and was told to say that he had no further declaration to make.¹ On January 7, 1752, Frederick further ordered that when the commission had completed their inquiry into the losses, a detailed statement should be prepared.²

New-
castle's
answer to
Michell.

Early in March Newcastle sent for Michell³ and told him that the King, having caused the points stated by him in December to be carefully examined by the Privy Council and the Law Officers, had come to the conclusion that nothing illegitimate or unjust had been done to Prussian subjects, and that they had been treated like all other nations, and the King flattered himself that after mature reflection Frederick would not carry out his declaration ; but he had orders to declare that if, contrary to all expectation, he persisted in such pretensions in opposition to engagements so precise as those of the complete payment of the Silesian debt, H. B. Majesty would consider himself freed from the reciprocity attached to those engagements, which, however, he would always fulfil with exactness, provided Frederick did as much on his side.

The written reply delivered by Newcastle to Michell differs somewhat from this account of it ; after reciting what he regarded as the substance of Michell's declaration of December 11, Newcastle proceeded to say that having reported the said declaration to the King, his Majesty had directed him to give the following reply, and to avoid all mistake, had permitted him to give it in writing :⁴

¹ *Pol. Cor.* ix. 3.

² *Ibid.* 86.

³ App. 31 and 32 ; *S. P. For., Foreign Ministers in England*, vol. 48.

⁴ The original is in French.

That the judgements complained of had been pronounced by a sovereign court established from the earliest times, which had always decided cases of this nature. That its jurisdiction had been recognized by all the nations of Europe, without having ever been called in question, and could not be disputed with the slightest shadow of reason or justice. That the commission to be set up by his Prussian Majesty, and the intention of claiming a jurisdiction belonging incontestably to another sovereign State was an unheard of innovation, which could not be submitted to. That the defalcation in question would be a novelty as unheard of as the other. That the Silesian debt was based on an express article not only of the preliminaries of Breslau but also of the treaty of Berlin, of which the King was a guarantor, and was the only article in which Great Britain was directly interested. That by diverting any portion whatsoever of the amounts promised by this article to any other purpose than the satisfaction of the creditors the said treaties would be manifestly violated, and that in that case the King would hold himself *ipso facto* freed from any obligation in respect of the guarantee that his Majesty had given thereof.

A memorandum in English,¹ dated March 11, 1752,² drawn up doubtless for the information of the King and his ministers, gives the same account as Michell's report; it records that Michell said he had represented the matter in that light to Frederick; he appeared to admit that nothing had been done in the case of Prussian subjects but what was the rule with respect to all other foreign Powers, and he seemed to think that nothing more would be heard of the affair.

Michell sent home a copy of Newcastle's written memorandum³ (together with another relating to a Prussian claim to be admitted to trade at Indian ports). He

¹ App. 31.

² By the Act 24 Geo. II, c. 23, the year 1752 was made to begin on January 1.

³ *Pol. Cor.* ix. 87.

had, like Podewils, deprecated the step Frederick threatened to take, but his representations failed equally of effect.¹ Frederick immediately gave instructions to direct Earl Marischal to inform the French Government confidentially of the various matters in respect of which the English Court now and for some time past had acted towards him in an unfriendly manner, amongst which was the well-known affair of the depredations on Prussian commerce.²

Report of
the
Special
Com-
mission.

The commission reported on July 22 that the total of the recognized claims was 189,770 reichsthalers, exclusive of current interest.³ Their detailed statement of the case was also approved and ordered to be translated into French.⁴ In August, orders were given by Frederick to set apart, out of the £45,000 remaining to be paid on account of capital, a sum of 199,159 th. 9 gr. 6 pf., to be applied in payment of the Prussian claims whenever the dispute was disposed of, and the balance to be kept in hand until it was known whether the bondholders would accept it in full payment of what was due to them. He then recast the *pro-memoriâ* with his own hand,⁵ and returned it to the Foreign Department for transmission to Michell, who delivered it to Newcastle on November 23. At the same time he put in a copy of the judgement of the special commission,⁶ together with a list of the claimants and the sums awarded to each, including interest up to the end of December 1751: principal 156,486 th. 20 gr. 4 pf., plus interest 33,283 th. 8 gr. 1 pf., total 189,770 th. 4 gr. 5 pf. The detailed statement of the case was presented in December.

¹ *Pol. Cor.* ix. 29.

² *Ibid.* 86.

³ *Ibid.* 176.

⁴ *Ibid.* 199.

⁵ *Pol. Cor.* ix. 225. *Preuss. Staatsschr.* ii. 447. An English translation in Magens, *An Essay on Insurances, &c.*, 2 vols., London, 1755, in *Cabinet Library of Scarce and Celebrated Tracts*, vol. 1, International Law. The second mentioned is the exact text of the *pro-memoriâ* delivered by Michell. The English version alone prints the lists of captures of Prussian and neutral vessels.

⁶ App. 33.

CHAPTER VI

THE PRUSSIAN SECRETARY PRESENTS A *PRO-MEMORIA*

THE Prussian *pro-memoriâ* complains in general terms of the capture of vessels owned by Prussian subjects, of the confiscation of property of some merchants and of the detention of that of others, and that these proceedings were adopted in spite of the fact that the Prussian subjects concerned were not engaged in a contraband trade ; that justice had not been obtained from the English courts nor from the Government ; and that even where no pretext could be found for condemning the ships and cargoes, the owners had been cast in damages for the expenses of the captors :

Analysis
of the
Prussian
Case.

That it had not been concealed from the English ministers that in case redress were refused, the King of Prussia would find himself obliged to seize the capital secured on the duchy of Silesia as he could not otherwise indemnify his subjects : that he had nevertheless continued to pay off the debt up to the final instalment, and it was only when he saw that neither the justice of his demands, the lapse of time, reiterated reasons nor impotency produced any effect, that he thought himself obliged to have recourse to the only means that remained, of deducting from the money due to the English bondholders the amount which his subjects asked as compensation :

Warning
had been
given to
English
Ministers.

Pay-
ments
of debt
continued
up to
final in-
stalment.

That the law which obliges us to pay our debts authorizes us to demand the same thing from our debtors : the King owed the last instalment—he kept it back—and after having warned the British Government on every possible occasion, he set up a commission to try with impartiality and strictness the claims of the Prussian merchants. The commission having concluded its work,

Right to
detain
debt as a
set-off to
claim.

the writer had the honour to deliver to their Excellencies a copy of the decisions arrived at on the separate claims, the result being that of 239,840 thalers claimed, the commission had allowed only 156,486 thalers 20 groschen of principal and 33,283 thalers interest at six per cent ;

Offer to
allow ap-
peal
against
decision
of the
Special
Com-
mission.

Although his Majesty had every reason to be persuaded that the commission had proceeded according to the forms of the most impartial justice, he had nevertheless instructed the writer to declare that he was disposed to have the facts in dispute examined afresh by the commission, in case any naval officers or privateers—who believed themselves wronged—considered it pertinent to intervene and cause the judgement to be varied, should the pleas of the other party prove to be valid : The King fixed three months from the date of this declaration as the limit of time within which these pleas might be exhibited : As the list of the different captures annexed to the *pro-memoria*¹ contained the names of those who effected them, his Majesty left it to the British Government to decide how it would inform the parties concerned, in order that they might appeal. If the period elapsed without any person undertaking to justify himself, his Majesty would abide by the decree of his Council, and would in consequence deduct the amount adjudged to his subjects—including interest up to July 10, 1752—that is, he would deduct from what was due to the bondholders 194,725² Brandenburg th. 4 gr. and 5 pf. to compensate the Prussian merchants. At the same time, he was ready to arrange for remitting to the commissioners (*commissaires*) of the loan the remainder of what he still owed for principal and interest up to July 10, on the understanding that they furnished receipts for the whole sum due to them for principal and interest (*le résidu de ce qu'elle doit encore à ce titre, tant pour le capital que pour les intérêts à 7 pour cent écoulés le 10 de juillet de la*

Balance
would be
remitted
in ex-
change
for a
receipt in
full.

¹ Not quite exact. The lists were annexed to the *Exposition des Motifs*, delivered December 13.

² Seems a miscalculation.

présente année, bien attendu que lesdits commissaires fournissent des quittances valables du capital et des intérêts).

In case this equitable arrangement was refused, he (Michell) was to declare that the King would cause this amount to be handed over to the Chamber of Justice at Berlin, to be deposited there until such time as the bondholders should be pleased to withdraw it by furnishing a discharge in full, and as interest would naturally cease to run after this step was taken, the King protested that he would not be accountable thereafter, and in virtue of his protest, he regarded the debt secured on Silesia to be entirely extinguished and the duchy to be completely discharged of all obligation on this account.

The judgement annexed to this *pro-memoriâ*, signed von Fürst, Behmer, and Kuhn, and dated July 1, 1752,¹ lays it down :

First, That Prussian and other neutral ships could not rightfully be taken on the high seas on the sole ground, whether going to or coming from an enemy port, that the cargo or any part of it was enemy property.

Enemy property may not be taken in neutral ships.

Second, That contraband was concisely determined by treaties of navigation and by the formal declaration made by the British Ministry to the Sieur Andrié, and that neither free and permissible goods belonging to enemies, nor in general, timber, rye, or other goods not being munitions of war, could be included in this denomination.

What is contraband of war.

Third, That the English courts had evidently acted contrary to law in declaring such goods as were not contraband subject to confiscation, and

Illegal judgements of the English prize-courts.

Fourth, That their decisions and proceedings could not in the case in hand, nor in general, constitute any right or prejudice between two Sovereign Powers.

Judgement of a prize-court not conclusive as between the Governments.

That consequently all Prussian subjects were entitled to compensation, whether for the unjust capture and detention of Prussian ships, both for the ship itself and the cargo, or for goods loaded upon other neutral ships,

¹ App. 33.

which had similarly been taken and detained, or for goods confiscated which were loaded, whether on Prussian or other neutral ships, or for the unjust costs, delays, and proceedings to which they had been subjected by the English courts.

In consequence of these principles, set forth in a particular statement of the case (*Déduction*), they had examined with exactness the claims of all the Prussian subjects presented to them, verified with the required precision the proofs adduced by them, and the damages caused to them, and had not allowed anything that could not be justified on received principles, adding thereto nothing but the interest due as a natural consequence.

They concluded, in conformity with their oath, that there ought to be allowed by way of principal and interest up to the last day of December 1751, apart from interest further accruing up to the day of payment, to the above-mentioned Prussian subjects, the sums stated in the sixty-six annexed judgements of liquidation.

Then follows a list of the claimants and of the sums allowed to each (without any indication of the subject-matter of the claim, nor how it arose).

And finally, a list is given of twelve claimants, whose claims had been rejected, either because they could not prove that their loss had been caused by English privateers, or because they had loaded their goods on enemy ships,¹ or because the losses had been caused by the English army on the Rhine, which were not in question, or because the claimants had not produced any documentary proofs of their claims during the time that the commission had lasted. The total of the claims thus rejected amounted to 4,029 thalers 11 groschen.

¹ According to the principle of 'enemy ships, enemy goods'.

CHAPTER VII¹

EXPOSITION des motifs fondés sur le droit des gens universellement reçu, qui ont déterminé le Roi de Prusse, sur les instances réitérées de ses sujets commerçants par mer, à mettre arrêt sur les capitaux que Sa Majesté avoit promis de rembourser aux sujets de la Grande-Bretagne en vertu des traités de paix de Breslau et de Dresde, et à procurer sur lesdits capitaux à ses sujets susmentionnés le dédommagement des pertes que leur ont causées les déprédations et les violences des armateurs anglois exercées contre eux en pleine mer.

Berlin, 1752

§ 1. La guerre s'étant allumée en 1744 entre la nation angloise d'une part, et les rois de France et d'Espagne de l'autre, le Roi, pour mettre en sûreté le commerce de ses sujets, prit la précaution d'adresser au sieur Andrié, son ministre à Londres, un ordre en date du 14 avril 1744, par lequel il le charge :

Instructions sent to Andrié in 1744 to inquire officially what was the English list of contraband.

de s'informer du ministère anglois, de ce que précisément chez eux passoit pour contrebande, et si les grains, le bois de charpente, les planches, le chanvre, la graine de lin, les toiles, etc., y étoient compris, pour que le Roi pût en avertir ses sujets, et leur donner les instructions nécessaires sur la manière dont ils devoient continuer leur commerce.

§ 2. La déclaration que le lord Carteret fit au sieur Andrié, au nom de Sa Majesté le roi de la Grande-Bretagne,

Carteret's verbal reply.

¹ *Preussische Staatsschriften*, ii. 452 ; Ch. de Martens, *Causes célèbres du droit des Gens*, 1827, ii. 12. The author of the *Preuss. Staatsschr.* calls the latter 'ein vielfach ungenauer Abdruck', but the differences are not numerous, and are merely verbal. The printed copy delivered by Michell is at the Record Office. There is an English version in the *Cabinet Library* above cited, p. 42 n.

et dont il donna avis dans sa dépêche du 18 mai 1744, porte :

que le pavillon du roi seroit respecté à l'égal de celui des autres puissances alliées de l'Angleterre, à l'exception des seuls vaisseaux qui porteroient des munitions de guerre aux ennemis de la nation britannique.

Carteret's
second
reply.

§ 3. Le Roi ayant exigé une déclaration plus précise sur tous les objets contenus dans le mémoire que son ministre avoit présenté là-dessus, le susdit sieur Andrié dans sa dépêche du 29 mai/9 juin manda :

que le lord Carteret, secrétaire d'état, lui avoit réitéré et assuré au nom du roi de la Grande-Bretagne, QU'AUCUN DES OBJETS contenus dans l'ordre donné au susdit sieur Andrié, comme les bois et autres matériaux de construction pour les vaisseaux, non plus que les cordages, les voiles, le chanvre, la graine de lin, etc. n'étoient réputés contrebande ; que la nation angloise respecteroit avec soin le pavillon et les sujets du Roi, qu'on ne troubleroit en rien le commerce de ces derniers, *pourvu qu'ils s'abstinssent de ne porter aucune MUNITION DE GUERRE aux ennemis de la Grande-Bretagne (munitions spécifiées dans tous les traités de commerce entre les puissances maritimes) ni aucunes MUNITIONS DE BOUCHE aux places assiégées ou bloquées par ladite nation. Qu'au surplus le commerce demeureroit libre aux puissances neutres, sur le même pied qu'il l'étoit en temps de paix.*

Carteret's
refusal to
put his
reply in
writing.

§ 4. Il convient de remarquer ici que lorsque le sieur Andrié exigea là-dessus une déclaration par écrit du lord Carteret, celui-ci lui répondit toutes les deux fois qu'il lui en parla, que ce n'étoit pas l'usage en Angleterre.

Anglo-
Dutch
treaty of
1674 on
contra-
band.

§ 5. Le lord Carteret s'étant spécialement rapporté, quant à ce qui se nomme contrebande, aux traités conclus entre les puissances maritimes, le Roi par surabondance fit examiner les traités conclus en 1674 entre l'Angleterre et la Hollande, et l'on y trouva que tous les objets que lord Carteret avoit déclarés au sieur Andrié être de

contrebande ou non de contrebande y étoient énoncés mot à mot ; car dans l'article III du susdit traité on y nomme contrebande :

les armes, les bombes, et tout ce qui y appartient, la poudre, les armes à feu, les mortiers, les boulets, les sabres, les lances, les pétards, les arquebuses, les grenades, le salpêtre, les cuirasses et autre attirail de guerre, de même que les soldats, les chevaux, les selles, etc.

et par contre l'article IV met au nombre de ce qui n'est point de contrebande :

les draps, la laine, le lin, les habits, les chemises, l'étain, le plomb, les charbons de terre, toutes sortes de grains, le tabac, les épiceries, la viande salée, le fromage, le beurre, le vin, le sel, et toute sorte de vivres ; les mâts, les planches, la charpente et autres bois propres à construire et réparer les vaisseaux, et en général toutes les marchandises qui ne sont pas comprises dans l'article précédent, de sorte qu'il y est permis aux alliés de transporter de ces dernières marchandises aux places ennemies, à l'exception seulement de celles qui se trouveroient assiégées ou bloquées.

Il est constant que dans les précédentes guerres la nation angloise n'a réputé pour contrebande *que les choses uniquement qui étoient d'usage à la guerre.* Voyez § 34.

§ 6. En conséquence de cette déclaration, dont le Roi fit faire part à ses sujets, il les fit avertir, qu'à l'exception des **MUNITIONS DE GUERRE**, ils pouvoient librement commercer comme en temps de paix.

§ 7. Les armateurs anglois respectèrent pendant plus d'un an le pavillon prussien, et laissèrent passer sans empêchement tous les vaisseaux de cette nation, ceux mêmes qui étoient chargés de *planches*.

Ce ne fut qu'en octobre 1745 qu'on s'avisa pour la première fois d'arrêter des vaisseaux chargés de planches pour la France, et qu'on ne voulut point laisser passer les bois ; mais la déprédation alla ensuite si loin, que les

In
October
1745
English
cruisers
began to

seize
vessels
loaded
with free
goods.

armateurs, bien que les susdits vaisseaux ne fussent chargés que de marchandises visiblement libres, et que leurs capitaines les en assurassent, par la production de leurs lettres de mer, connoissemens et certificats, non contents de les arrêter, leur enlevèrent tout ce qui se trouvoit à leur bienséance et les conduisirent avec violence à leurs ports.

Il arriva, entre autres, qu'un armateur ayant pris un vaisseau d'Emden, chargé de sel, non content de lui enlever sa cargaison et les habits des gens de l'équipage, les maltraita encore indignement à coups de bâton.

Prussia
made re-
peated
represent-
ations to
Chester-
field; the
written
reply re-
ceived.

§ 8. Le Roi, sollicité par les plaintes réitérées de ses sujets, ayant fait faire à cette occasion nombre de représentations, tant par le sieur Andrié, que par le Sieur Michell, son secrétaire d'ambassade, le lord Chesterfield, alors secrétaire d'état, répondit par écrit le 5/16 janvier 1748 :

que le Roi de la Grande-Bretagne, pour n'omettre aucune occasion de faire éclater toute l'attention qu'il avoit pour le roi de Prusse, ne faisoit aucune difficulté de déclarer qu'il ne porteroit aucun empêchement à la navigation des sujets prussiens, aussi longtemps que ceux-ci excerceroient [*sic*] leur commerce d'une manière permise, *et se conformeroient aux anciens usages établis et reçus entre puissances neutres.*

Subse-
quent de-
claration
by
Chester-
field.

§ 9. Et lorsqu'à l'occasion de la prise d'un vaisseau hollandois, nommé *Les Trois Sœurs*, le secrétaire Michell fit de nouvelles représentations, et en demanda satisfaction au lord Chesterfield, celui-ci lui déclara le 11/22 septembre 1747 :

que l'intention de la Grande-Bretagne étoit NB., de s'en tenir à la déclaration du lord Carteret, faite NB. au nom de Sa Majesté Britannique au susdit sieur Andrié au commencement de la guerre.

No satis-
faction
ever re-
ceived.

§ 10. Les choses cependant en demeurèrent à ces simples déclarations, sans qu'on eût jamais donné la moindre satisfaction, soit des premiers dommages et des

insolences des armateurs, soit des déprédations, qui allèrent toujours en augmentant les années 1747 et 1748, bien que le Roi eût fait déclarer à diverses reprises, qu'il s'en prendroit aux capitaux des Anglois qu'il s'étoit engagé de leur payer à l'acquit de la Silésie, par les traités de paix de Breslau et de Dresde, et qu'il indemniserait là-dessus ses sujets.

§ 11. C'est enfin ce qui a contraint le Roi à céder aux instances pressantes et aux sollicitations réitérées de ses sujets, à prendre réellement fait et cause en leur faveur, à se servir à cette fin des moyens dictés tant par la raison que par le droit des gens, à dédommager en un mot ses sujets sur les capitaux des Anglois qui se trouvent entre ses mains.

King of Prussia obliged to indemnify his subjects out of the Silesian debt.

§ 12. Mais afin que tout l'univers puisse être pleinement convaincu du procédé insoutenable et injuste des armateurs anglois, on examinera ici les questions suivantes, qui sont relatives aux griefs des sujets prussiens et qui serviront à les mettre dans tout leur jour, savoir :

Questions of right in these cases.

I. Si les armateurs anglois ont été en droit d'arrêter en pleine mer les vaisseaux prussiens, de les visiter, et, malgré l'exhibition de leurs lettres de mer et connoissemens, par lesquels ils prouvoient qu'il n'y avoit aucune contrebande sur leur bord, de les conduire avec violence dans les ports d'Angleterre ?

II. Si lesdits armateurs anglois ont été fondés d'arrêter en pleine mer des vaisseaux prussiens, sous le prétexte *qu'il s'y trouvoit des marchandises qui appartenoient aux ennemis de la nation britannique* ? S'ils ont été en droit de les conduire dans leurs ports et retarder par là le cours de leur navigation ?

III. Si lesdits armateurs ont été en droit d'arrêter en pleine mer d'autres vaisseaux neutres, comme étoient ceux de Suède, de Hollande, de Danemark, de Hambourg, etc., *frétés en tout ou en partie par des sujets prussiens*, de les conduire en Angleterre, de les y détenir des années entières et de troubler de cette manière le commerce des sujets prussiens ?

IV. Si les marchandises chargées, soit sur des vaisseaux prussiens soit sur des vaisseaux neutres, par les sujets du Roi, et qui leur ont été confisquées en vertu des injustes sentences rendues par les tribunaux anglois, étoient effectivement de contrebande ?

V. Si le ministère anglois a été en droit de renvoyer à un tribunal de marine établi en Angleterre, la décision des différends de la nature de ceux qu'on a examinés dans les questions précédentes et qui s'agitent entre deux puissances libres, et de vouloir obliger la puissance lésée qui demande satisfaction, à s'en tenir à ses décisions ?

VI. Si, au contraire, le Roi n'est pas pleinement fondé de déférer à l'arrêt que ses sujets l'ont supplié de mettre sur les capitaux anglois, stipulés par les paix de Breslau, et de Dresde, qui se trouvent entre ses mains, pour procurer à ses sujets les dédommagements et la réparation convenables des violences exercées contre eux par les armateurs anglois, en dépit du droit des gens, et malgré les déclarations formelles réitérées par le ministère anglois ; et si le Roi n'est pas en droit d'indemniser ses sujets sur ces capitaux, puisqu'on leur a si longtemps dénié toute la justice qu'ils étoient fondés de demander ?

EXAMEN DE LA PREMIÈRE QUESTION

1. As to right of capturing Prussian vessels which had no contraband on board.

Si les armateurs anglois ont été en droit d'arrêter en pleine mer les vaisseaux prussiens, de les visiter, et, malgré l'exhibition de leurs lettres de mer et connoissemens, par lesquels ils prouvoient qu'il n'y avoit aucune contrebande sur leur bord, de les conduire avec violence dans les ports d'Angleterre ?

The sea free to everybody.

§ 13. Il paroît par la pièce ci-jointe, cotée A, que 18 vaisseaux prussiens ont été arrêtés par les armateurs anglois d'une façon aussi insoutenable qu'injuste, et qu'on les a conduits avec violence en Angleterre. Ce procédé est visiblement contraire au droit de la nature et des

gens, selon lequel c'est un principe universellement reconnu par tous les peuples raisonnables, que la mer est au nombre des choses appelées *res nullius*, ou desquelles l'homme ne peut se rendre le maître. § 5 *Inst. de rer. divis.* Si donc personne ne peut s'attribuer la souveraineté et la propriété de la mer, il s'ensuit naturellement que l'usage en est commun à tous les hommes, et que personne n'est en droit de l'interdire aux autres. L. 2, § 1 ff. *de rer. divis.* ; § 1 *Inst. cod.* ; L. 13, § *fin.* ff. *de injur.* ; L. 3, § 1. *ne quid in loco publ.* ; L. 13, ff. *Comm. praed.*

Selon ces principes fondés dans la raison, toutes les puissances ont un droit égal de naviguer et de commercer sur mer. L. 4, § 1 ff. *de rer. divis.* ; § 1, *Inst. cod.* D. I. 13 § *fin.* ; L. 1, § 1, *de acquir. rerum dominio* ; L. 2, § 9, ff. *ne quid in loco publico* ; L. 13, ff. *commun. praed.*

§ 14. On seroit en état, sans recourir même aux jurisconsultes romains (auxquels le droit de la nature et des gens étoit parfaitement connu), de soutenir cette thèse par une infinité d'autorités et d'exemples. Vid. *Grot. in tractatu de mari libero.*

Mais cela seroit superflu, puisque la nation angloise elle-même s'en est prévaluée dans diverses circonstances. Lorsque l'envoyé d'Espagne, Mendoza, se plaignit à la reine Élisabeth de ce que les vaisseaux anglois s'avisent de naviguer sur la mer des Indes, la Reine lui répondit :

Queen Elizabeth's answer on this subject.

Qu'elle ne voyoit point de raison qui put l'exclure, elle et d'autres nations, de la navigation aux Indes ; puisqu'elle ne reconnoissoit à l'Espagne aucune prérogative à cet égard, et bien moins encore le droit de prescrire des lois à ceux qui ne lui étoient tenus à aucune obéissance, ou de leur interdire le commerce ; que les Anglois naviguoient sur l'océan, dont l'usage, tout comme celui de l'air, étoit commun à tous les hommes, et qui par sa nature même ne pouvoit tomber en la possession et sous la propriété de personne. Cambden in vita Elis. ad ann. 1580, p. m. 328 seqq.

§ 15. En conséquence de ce principe, fondé dans le

droit de la nature et des gens, la nation angloise a protesté avec chaleur, dans diverses conjonctures où on lui a arrêté, visité et pris des vaisseaux, et a taxé de pareils procédés de violation manifeste du droit des gens.

English
view of
right of
neutrals
to trade
to a belli-
gerent's
ports.

On ne doute pas que la nation angloise ne se rappelle encore les grands mouvements qu'elle se donna, quand le roi de Suède, dans la guerre contre la Russie, fit arrêter tous les vaisseaux anglois qui étoient destinés pour les ports de Livonie, et porta par là un grand préjudice à leur commerce. Ils en appeloient alors hautement au droit des gens :

Selon lequel ils soutenoient, qu'il étoit permis aux sujets de l'Angleterre de commercer avec tous les États qui à leur égard étoient neutres, bien qu'ils fussent impliqués dans une guerre avec d'autres puissances pareillement neutres à leur égard, de même que les Anglois permettoient aux sujets suédois de naviguer et de commercer avec tous les États et à tous les ports neutres par rapport à la Suède, bien qu'impliqués dans la guerre avec l'Angleterre ; ce qui étoit évident par cela même qu'ils permettoient alors aux sujets suédois de commercer librement avec la France et l'Espagne, qui étoient dans ce temps-là en guerre ouverte avec l'Angleterre.

Cet exemple est d'autant plus favorable aux sujets prussiens, que ces vaisseaux suédois étoient pour la plupart chargés de contrebande, et qu'on pousoit les choses jusqu'à conduire des vaisseaux de guerre même aux ennemis.

§ 16. Quelle longue, sanglante et coûteuse guerre n'a pas soutenue l'Angleterre contre l'Espagne, pour défendre la liberté de son commerce et de la navigation, parceque les Espagnols visitoient leurs vaisseaux dans les mers d'Amérique, pour empêcher la contrebande.

England
disputes
Spanish
right of
search.

Dans la déclaration de guerre du 30 octobre 1739, l'Angleterre, après y avoir déduit ses griefs contre l'Espagne, s'explique ainsi :

Que tous ces griefs venoient de ce que l'Espagne s'attribuoit, contre toute raison, le droit d'arrêter et de visiter les vaisseaux anglois, prétention contraire au droit de navigation qui appartenoit aux Anglois aussi bien qu'aux Espagnols, et par conséquent contraire au droit des gens.

Sur ce fondement, l'Angleterre, dans la susdite déclaration de guerre, taxe cette prétention de mal fondée, d'injuste, de dangereuse et qui intéressoit toutes les puissances de l'Europe, et l'on soutient dans les mémoires suivans qui ont paru de sa part, que l'Espagne devoit se contenter *de la simple présentation que les vaisseaux anglois feroient de leurs lettres de mer et de leurs connoissemens*; et c'est là-dessus que roulent encore jusqu'à cette heure les plaintes de la nation britannique contre les garde-côtes d'Espagne.

§ 17. Ces principes constatent évidemment le droit des sujets prussiens, et portent avec d'autant plus de force contre les armateurs anglois, que l'Angleterre avoit les bras liés vis-à-vis de l'Espagne par divers traités de paix et de commerce avec cette couronne, au lieu que n'y ayant aucun traité pareil entre la Prusse et l'Angleterre, cette affaire ne peut ni ne doit être discutée que selon le droit des gens.

§ 18. Tout ce qu'on pourroit accorder à la nation angloise, seroit, *de permettre à ses armateurs de s'informer des vaisseaux neutres qu'ils rencontreroient en mer, et qui faisoient voile pour l'Espagne ou la France, s'ils n'avoient point de contrebande, etc.* Mais il n'étoit nullement besoin de visiter ces vaisseaux, encore moins, de les conduire de force dans les ports d'Angleterre et de les y détenir des années entières; les armateurs n'avoient d'autre droit que de se faire exhiber leurs lettres de mer, connoissemens, ou certificats, pour découvrir s'il s'y rencontroit de la contrebande.

On s'appuie ici, par rapport à cet usage, sur les principes que la Grande-Bretagne a établis elle-même dans son différend avec l'Espagne et en conséquence desquels elle

soutient que l'Espagne auroit dû se contenter qu'on eût produit à ses armateurs les lettres de mer et les certificats. Voyez § 16.

Anglo-Dutch treaties cited.

§ 19. Et comme le droit des gens se vérifie principalement par les exemples et les traités des puissances maritimes, on en appelle ici aux plus célèbres traités conclus entre lesdites puissances, et où l'on est convenu de part et d'autre d'en agir de cette façon. C'est ainsi qu'en parlent les traités conclus entre l'Angleterre et la Hollande de l'an 1667 et 1668, art. 10 — Du Mont, *Corps diplom.*, t. vii — et le traité de commerce de 1674, dans l'art. 5, s'exprime ainsi :

Lorsqu'un vaisseau hollandois, destiné pour un port ennemi, rencontrera en pleine mer des vaisseaux anglois, celui-ci s'arrêtera à une certaine distance, et le vaisseau anglois lui dépechera sa chaloupe, de laquelle deux ou trois hommes se rendront sur son bord et se feront produire par son capitaine ou patron ses lettres de mer et de certificat, pour se convaincre s'il y a de la contrebande.

§ 20. La saine raison dicte suffisamment que sans cette précaution, et s'il étoit permis aux armateurs d'attaquer un vaisseau neutre à force ouverte, d'en rompre et briser les caisses et les coffres, de les traîner avec violence dans les ports d'Angleterre, non obstant que par leurs certificats ils prouvassent n'avoir point de contrebande, etc., on ne sauroit se faire aucune idée d'un commerce libre. Quelle nation neutre en effet se hasarderoit de commercer, si elle prévoyoit qu'après avoir recouvré la relaxation de son vaisseau, elle n'auroit aucune réparation à attendre des dommages, des fraix, ni des insolences qu'elle auroit essuyées, et verroit encore ses vaisseaux neutres condamnés à payer aux armateurs les fraix de leur capture, etc. ; peut-on nommer cela un commerce libre ? Si les négociants prussiens avoient dû négocier sur ce pied-là, la perte eût toujours à coup sûr surpassé le gain, et si la guerre avoit duré plus longtemps, ils eussent perdu le sens commun de continuer un commerce aussi ruineux.

§ 21. Le ministère d'Angleterre a déclaré expressément que la liberté de commerce à l'égard des vaisseaux neutres devoit subsister *sur le meme pied qu'en temps de paix*, à l'exception des munitions de guerre. En temps de paix on n'arrête point les vaisseaux dans leurs cours, loin de les traîner dans les ports d'Angleterre.

English minister had declared that neutrals were free to trade as in time of peace.

§ 22. Les conséquences naturelles qu'on peut tirer de tout ce que dessus, c'est qu'on n'a nullement laissé aux sujets prussiens le commerce libre *comme en temps de paix*, malgré les lois du droit naturel et l'assurance positive qu'en avoit donné le ministère anglois ; mais qu'au contraire par là le commerce desdits sujets a été ruiné, et que par conséquent les armateurs anglois sont tenus à la réparation des dommages qu'ils ont causés aux sujets du Roi.

§ 23. L'Angleterre ne sauroit s'inscrire en faux contre cette conséquence, vu qu'elle a traité elle-même de violation du droit des gens, comme on l'a déjà remarqué ci-dessus, le procédé des Espagnols, quand ceux-ci, non contents de la production des lettres de mer et des certificats, se sont mis en devoir de visiter les vaisseaux mêmes. *Voyez § 16.*

QUESTION II

Si lesdits armateurs anglois ont été fondés d'arrêter en pleine mer des vaisseaux prussiens, sous le prétexte qu'il s'y trouvoit des marchandises qui appartenoient aux ennemis de la nation britannique ? s'ils ont été en droit de les conduire dans leurs ports et retarder par là le cours de leur navigation ?

Whether there was a right of capturing enemy goods in neutral vessels.

§ 24. L'un des plus forts griefs des sujets prussiens consiste en ce que leurs vaisseaux chargés en France, se sont vus arrêtés en pleine mer, lorsqu'ils retournoient chez eux, et conduits par les armateurs anglois dans les ports d'Angleterre ; qu'après y avoir été détenus un certain temps, on les a relâchés, à la vérité, mais qu'on en a confisqué les marchandises de France, ou qu'au moins

Capture of Prussian vessels carrying French merchandise.

on a exigé de l'équipage qu'il prouvât que lesdites marchandises appartenoient en propre à des sujets prussiens, qu'elles ne leur étoient point données en commission par des marchands françois, et que ceux-ci ne s'étoient point chargés des risques, etc.

Contrary to the law of nations and to all treaties.

§ 25. Cette conduite est non seulement contraire au droit des gens, mais aussi à tous les traités qui jamais furent conclus entre des puissances maritimes.

Car si (1) comme on ne peut en douter, il étoit libre aux sujets prussiens, tant selon le droit des gens, que selon l'aveu formel du ministère anglois, de commercer avec l'Espagne et la France, il s'ensuit de là nécessairement que ledit commerce devoit être général et pouvoit se faire, soit par achat, soit par échange, soit en prenant des marchandises françoises en commission, etc.

Or par un commerce de cette nature (2) on ne faisoit aucun tort à la nation angloise, puisqu'à l'égard de ces vaisseaux de retour, destinés pour des ports neutres, il ne pouvoit être raisonnablement question de contrebande, qui est la seule exception qui puisse avoir lieu ici, et selon le droit des gens et suivant la déclaration du ministère anglois.

A neutral ship is a neutral 'place'.

Il est de plus incontestable (3) que les ennemis, selon la raison et le droit des gens même, sont en sûreté, l'un à l'égard de l'autre, quand ils se rencontrent dans un lieu neutre, et que par conséquent un ennemi ne peut attaquer son ennemi dans un lieu semblable, ni se saisir d'aucun de ses effets. Or les vaisseaux prussiens, quand ils auroient été chargés des effets appartenant aux ennemis de l'Angleterre, étoient un lieu neutre, d'où il s'ensuit qu'il est tout un d'enlever ces effets desdits vaisseaux neutres, ou de les enlever sur un territoire neutre. Cette loi du droit des gens se trouve confirmée par cette maxime notable, expressément établie dans les traités entre l'Angleterre et la Hollande et entre l'Angleterre et la France, que *les vaisseaux libres rendent les marchandises libres*.

A quoi il faut ajouter (4) que, selon la déclaration du lord Carteret, le commerce des sujets prussiens *devoit être aussi libre qu'en temps de paix* ; or personne ne doute qu'en temps de paix il ne soit permis à tout le monde de négocier par échange, par commission, etc.

(5) Tous les traités conclus entre les puissances maritimes sont en ceci parfaitement d'accord avec le droit des gens. Cela se trouve clairement stipulé à l'article 8 du traité de 1667 entre l'Angleterre et la Suède — Du Mont, *Corps diplom.*, t. vii., p. 37 — et dans l'art. 8 du traité de 1674 cité ci-dessus il y est expressément décidé :

Que les effets de l'ennemi qui sont sur un vaisseau neutre ne doivent point être confisqués.

La même clause se trouve mot à mot répétée dans le traité de commerce de 1713 entre l'Angleterre et la Hollande et dans celui entre la Hollande et la France. — Du Mont, t. viii., p. 345, § 17 et p. 377, § 17. — et on en donne pour raison celle que l'on a déjà rapportée,

que les vaisseaux libres rendent les marchandises libres,
raison puisée dans le droit des gens.

§ 26. Le Roi se trouve donc parfaitement fondé d'exiger une réparation convenable des dommages causés à ses sujets par l'injuste procédé et détention de leurs vaisseaux, sans qu'il soit tenu de s'enquérir si les marchandises avoient été données en commission pour des lieux neutres par des négociants françois, ou s'ils s'étoient chargés d'en courir les risques.

QUESTION III

Si lesdits armateurs ont été en droit d'arrêter en pleine mer d'autres vaisseaux neutres, comme étoient ceux de Suède, de Hollande, de Danemark, de Hambourg, etc., NB. frétés en tout ou en partie par des sujets prussiens, de les conduire en Angleterre, de les y détenir des années entières et de troubler de cette manière le commerce des sujets prussiens ?

§ 27. La pièce ci-jointe cotée Lit. B prouve qu'il a été

Treaties cited :
Sweden,
Holland,
France.

Whether the English privateers had a right to capture other neutral vessels partly loaded by Prussian subjects.

Thirty-three such neutral ships captured, contrary to the law of nations and to the English minister's declaration.

arrêté en pleine mer 33 VAISSEAUX NEUTRES, dans lesquels les sujets prussiens étoient intéressés, et que les armateurs anglois, au lieu de se contenter de la production des lettres de mer et des connoissemens qu'en faisoient les capitaines pour justifier qu'ils n'avoient à bord aucune contrebande, les ont conduits dans des ports d'Angleterre, les y ont détenus, au moins plusieurs, des années entières, et que, bien qu'à la fin ils fussent relâchés, on n'a pas laissé de les condamner aux fraix de capture envers les armateurs.

Ce procédé qui a troublé le commerce des sujets prussiens, n'est pas seulement en contradiction avec le droit des gens, mais il est aussi diamétralement opposé au contenu de la déclaration du ministère anglois.

On suppose d'abord ici que tous les vaisseaux neutres ont eu le même droit que les vaisseaux prussiens, d'ou il s'ensuit qu'il est parfaitement égal que les Prussiens aient chargé leurs marchandises sur des vaisseaux prussiens, ou sur des vaisseaux neutres.

§ 28. Le ministère anglois fit assurer en général la cour de Berlin que la liberté du commerce subsisteroit à l'égard des puissances neutres, sur le même pied *qu'en temps de paix* (à l'exception des munitions de guerre).

Comme en temps de paix les sujets prussiens chargeoient leurs marchandises sur d'autres vaisseaux neutres, sans avoir à craindre, pourvu qu'il ne s'y rencontrât point de contrebande, de les voir conduire dans des ports d'Angleterre, ils ont de bonne foi continué leur commerce sur ce pied-là, se reposant sur la déclaration de l'Angleterre dont le Roi les avoit fait informer.

§ 29. Lesdits sujets prussiens n'auroient jamais chargé leurs marchandises sur ces vaisseaux, s'ils avoient pu prévoir que, contre le droit des gens, les principes reconnus par les Anglois mêmes, et contre la déclaration expresse de leur ministère, ceux-ci arrêteroient tous les vaisseaux neutres, qu'il y eût de la contrebande ou non, qu'ils les détiendroient des années entières dans leurs ports de mer

et les relâcheroient à la fin sans aucun dédommagement, et en les condamnant même aux fraix de la capture.

§ 30. Il est certain que la nation angloise ne pouvoit trouver un meilleur moyen pour porter le dernier coup au commerce des sujets prussiens, que de procéder contre eux de la manière qu'elle a fait, d'où il s'ensuit que ceux-ci sont fondés à prétendre une satisfaction proportionnée aux dommages et aux fraix que leur ont causés ces illégitimes détentions.

QUESTION IV

Si les marchandises chargées, soit sur des vaisseaux prussiens, soit sur des vaisseaux neutres, par les sujets du Roi, et qui leur ont été confisquées en vertu des injustes sentences rendues par les tribunaux anglois, étoient effectivement de contrebande ?

Whether the goods laden were really contraband.

§ 31. Les armateurs anglois ayant confisqué sur trois vaisseaux prussiens ou neutres le seigle et les bois qui y étoient chargés (voyez § 38), cela donne lieu aux deux questions suivantes :

lesdites marchandises étoient-elles de contrebande ou non ?

et,

qu'est-ce qu'on répute contrebande selon le droit des gens ?

C'est un axiome du droit des gens, qu'une guerre entre deux puissances ne sauroit interrompre ni empêcher le commerce des puissances neutres avec l'une et l'autre des puissances belligérantes, et qu'aucune de celles-ci ne sauroit défendre à celle qui reste neutre, l'usage de la liberté du commerce qui lui compète à cet égard, en vertu des droits naturels : et que par conséquent le commerce de toutes sortes de marchandises est régulièrement censé permis.

What is contraband by the law of nations.

§ 32. On n'excepte ici que le seul cas où des puissances neutres s'aviseroient de conduire à l'une des parties belligérantes des munitions de guerre, ce qui porteroit

préjudice à l'autre ; et c'est là ce que l'on nomme contrebande.

Grotius,
his
opinion.

§ 33. Le célèbre *Grotius* dans son *Traité du Droit de la Guerre et de la Paix*, en examinant la même question, distingue L. 3, c. 1, § 5, n. 2 entre des marchandises qui ne servent uniquement que *pour la guerre*, et celles qui servent *et dans la guerre et hors de la guerre*.

Il met la *première* sorte de marchandises au rang de la contrebande, mais pour la *dernière* il ne la répute telle qu'au cas qu'on l'envoie à des places assiégées ou bloquées.

English
declarations
on
various
occasions.

§ 34. La Grande-Bretagne a dans tous les temps parlé sur ce ton-là, lorsque des puissances neutres lui demandoient de s'expliquer sur ce sujet.

Lorsque la guerre s'alluma entre l'Espagne et la reine Élisabeth, la ville de Lübeck s'étant informée quelle sûreté elle auroit pour son commerce et quelles marchandises il lui seroit permis d'envoyer en Espagne, cette reine lui fit répondre :

qu'en s'abstenant d'envoyer des armes et d'autres attirails de guerre, il lui étoit libre d'y commercer avec toute sorte de marchandises. Selden *mar. claus.* L. 2, cap. 30, p. 423.

Le sieur Bonel, commissaire suédois, reçut en 1653 à une demande pareille une semblable réponse, et le parlement d'Angleterre lui fit dire :

que hors les munitions de guerre, il permettoit aux Suédois de commercer partout où bon leur sembleroit. Pufendorff. *rer. Suec.* L. 25, § 46.

§ 35. Le ministère anglois, dans sa déclaration au ministre de Prusse, se servit des propres termes de *Grotius* et déclara du premier abord, que les *munitions de guerre* seules seroient réputées contrebande. Voyez § 2.

Déclaration qui fut ensuite réitérée plus en détail et dans les termes suivants :

qu'on n'entendoit aucunement porter obstacle au commerce des sujets prussiens, pourvu qu'ils s'abstinsent

de porter aux ennemis de la nation britannique des munitions de guerre (dont les noms détaillés se trouvoient dans tous les NB. traités de commerce des puissances maritimes) et des munitions de bouche aux places assiégées ou bloquées, etc., et qu'au surplus la liberté de commerce subsistoit à l'égard des puissances neutres sur le même pied qu'en temps de paix. Voyez § 3.

Le ministère anglois ne s'est pas borné là, il a spécifié en détail tout ce qui n'étoit pas contrebande, comme *les grains, les bois et tous les autres matériaux qu'on emploie à la construction des vaisseaux*, les cordages, les voiles, le chanvre, la graine de lin, les toiles, etc.

§ 36. Tous les traités de navigation s'expliquent, par rapport à la contrebande, sur le même pied. On renvoie à ce qui a été dit sur ce sujet au § 5, ci-dessus, et au traité de commerce de 1674 conclu entre l'Angleterre et la Hollande, qu'on y a cité et où se trouve exactement détaillé ce qui est contrebande et ce qui est marchandise libre.

What is stipulated in commercial treaties.

Les marchandises des deux sortes se trouvent désignées dans les mêmes termes aux § 19 et 20 du traité de commerce, conclu entre l'Angleterre et la Hollande en 1713. Du Mont, t. viii, p. 348.

§ 37. On trouve d'autres traités antérieurs aux deux que l'on vient de citer, dans lesquels se trouve détaillé de la même manière, ce qui ne doit point être compris sous le nom de contrebande.

C'est ainsi qu'au § 3 du traité de commerce de 1667 entre la Suède et la Hollande on ne nomme contrebande que *les seules munitions de guerre*, et que dans le § 4, l'argent, *toutes sortes de grains, le sel*, le vin, l'huile, les voiles, les draps, *le chanvre*, tous les bois de charpente et tout ce qui sert à la *construction des vaisseaux*, les ancres, etc., sont mis au nombre des marchandises libres. Du Mont, t. vii, première partie, p. 37.

§ 38. Il suffit de jeter les yeux sur les marchandises qui ont été confisquées en Angleterre aux sujets prussiens,

pour se convaincre qu'il n'y en a aucune qui, selon le droit des gens, les traités de commerce et NB. NB. les déclarations du ministère anglois, puisse passer pour contrebande.

Timber and grain confiscated from Prussian ships.

Car on confisqua du vaisseau prussien, *Les Jumeaux*, une charge de bois; du vaisseau hollandois, *Les Trois Sœurs*, une pareille charge de bois; et du vaisseau prussien, *Le Soleil d'or*, une cargaison de seigle, toutes marchandises expressément exceptées de la déclaration du ministère anglois.

§ 39. Si le ministère anglois avoit déclaré, dès le commencement, qu'il regardoit ces marchandises comme de la contrebande, le Roi n'auroit pas manqué de faire avertir ses sujets de n'en point hasarder l'envoi, jusques à ce que l'on fût convenu là-dessus avec la cour d'Angleterre; mais le ministère anglois ayant positivement déclaré qu'il regardoit lesdites marchandises comme libres, et le Roi ayant fait part de cette déclaration à ses sujets, le susdit ministère ne peut en aucune manière justifier le procédé de ses armateurs.

Present English ministry repudiates assurance given by their predecessors.

§ 40. Le présent ministère de l'Angleterre cherche vainement à justifier le procédé des armateurs, par une raison qui choque également et le sens commun et les usages reçus par tous les peuples policés.

On avance que le précédent ministère n'a pas été en droit de faire de son chef de semblables déclarations, et de déterminer, contre la disposition des lois du pays, ce qui étoit contrebande ou ce qui ne l'étoit pas.

§ 41. On en appelle à tout l'univers s'il est permis entre puissances d'user de tels fauxfuyants.

The word of a Minister for Foreign Affairs is binding.

On sait (1) qu'il est d'usage que les princes ne traitent avec les envoyés étrangers que par l'entremise de leurs ministres; on est donc obligé d'ajouter foi à ce que ceux-ci déclarent au nom de leurs maîtres aux envoyés qui traitent avec eux; on y est forcé surtout, lorsque les ministres refusent, comme en cette occasion, de s'expliquer par écrit.

(2) Qui plus est, la susdite déclaration n'a pas été

faite par un seul ministre, mais bien par deux ministres consécutifs, en différents temps et toutes les deux fois au nom de Sa Majesté Britannique. Seroit-il à présumer que deux ministres dont l'intégrité et le zèle patriotique sont si universellement reconnus, se fussent oubliés au point de déclarer, au nom de leur maître, une chose sur laquelle il ne leur eût pas donné ses ordres, de tromper d'une façon aussi indigne une puissance étrangère, son alliée, et de tendre aux sujets de cette puissance des pièges aussi dangereux ?

D'ailleurs on a déjà fait voir (3) que les susdits ministres n'ont rien accordé que ce qui, selon le droit des gens et tous les traités entre puissances maritimes, se met toujours au rang des marchandises libres.

§ 42. On a remarqué, il est vrai, par certaines sentences émanées des tribunaux d'Angleterre, qu'on a confisqué la cargaison de quelques vaisseaux neutres sur lesquels étoient chargées des marchandises prussiennes, et il sembleroit du premier coup d'œil, que dans un tel cas les sujets prussiens ne seroient en droit d'exiger le dédommagement que des maîtres ou propriétaires du vaisseau.

On n'en disconvient pas, et l'on tombe d'accord, que, si le vaisseau neutre eût porté de la contrebande, les sujets prussiens n'eussent pu avec justice prétendre à aucune indemnisation ; mais comme ils nient formellement, aussi bien que les capitaines desdits vaisseaux, que l'on [*sic*] y ait eu de la contrebande, et que par les sentences même des tribunaux anglois il paroît clairement que les effets confisqués n'étoient nullement de contrebande, ce prétexte ne peut servir de rien aux armateurs, ni les exempter de réparer les dommages qu'ils ont causés.

§ 43. Il est donc démontré qu'on a violé manifestement le droit des gens et contrevenu directement aux assurances données par le ministère anglois, lorsque l'on a arrêté des vaisseaux neutres qui ne portoient point de contrebande, et qu'on a par là causé un dommage très considérable aux sujets prussiens.

QUESTION V

Whether questions of this sort should be sent to prize-courts for decision.

Si le ministère anglois a été en droit de renvoyer à un tribunal de marine établi en Angleterre, la décision des différends de la nature de ceux qu'on a examinés dans les questions précédentes, et qui s'agitent entre deux puissances libres, et de vouloir obliger la puissance lésée qui demande satisfaction, à s'en tenir à ses décisions ?

§ 44. Le ministère anglois, dans presque tous les cas où les ministres de Prusse lui firent des représentations au sujet des déprédations et insolences commises en pleine mer contre des sujets prussiens, leur a déclaré :

que le roi d'Angleterre avoit établi dans ses États des tribunaux exprès, pour examiner et décider, selon les lois d'Angleterre, toutes les prises sur lesquelles il y avoit contestation, et pour administrer la justice à un chacun, lesquels ne manqueroient pas aussi de rendre justice aux sujets prussiens, s'ils les trouvoient fondés dans leurs plaintes. Qu'au surplus, ni le roi de la Grande-Bretagne ni son ministère ne pouvoient, ni changer, ni se départir de cet usage ou constitution de l'État établi dans le pays.

The English Ministry had no right to exercise jurisdiction over a neutral sovereign, or over his subjects and ships stopped on the high seas, which are free to all.

§ 45. A l'occasion de quoi, on ne sauroit s'empêcher de demander de quel droit le ministère anglois s'arroge celui d'entrer en connoissance de cause et d'exercer une sorte de juridiction sur un souverain neutre, sur ses sujets et ses vaisseaux arrêtés dans un lieu qui n'est point de la domination de l'Angleterre, et où les vaisseaux prussiens ont autant de droit que les anglois ?

§ 46. De quel œil l'Angleterre auroit-elle vu le Roi, dans la dernière guerre du Nord, se saisir indifféremment de tous les vaisseaux anglois qui commerçoient aux provinces septentrionales, les arrêter en pleine mer, les visiter et les conduire dans ses ports, donner ensuite à décider au collège de son amirauté s'ils étoient de bonne prise, les relâcher sans aucun dédommagement après des procédures de deux à trois ans, et les condamner encore au payement

de deux, trois jusqu'à quatre mille écus pour fraix de capture et de justice ?

§ 47. Quand deux puissances se trouvent avoir entr'elles quelques différends, on ne peut d'aucun des deux côtés en appeler aux lois du pays, parce que l'une des deux parties ne les reconnoît point ; l'affaire se traite alors par voie de négociation, et de cour à cour, et le différend ne se décide, du consentement des deux parties, que selon le droit des gens, ou par des moyens qui s'y trouvent fondés.

Disputes between two Powers must be settled diplomatically.

§ 48. Il auroit été néanmoins très indifférent au Roi que ç'eût été le ministère anglois ou les tribunaux de cette nation qui eussent rendu justice à ses sujets ; mais comme ces tribunaux, contre le droit de la nature et des gens, n'ont procuré auxdits sujets prussiens aucune réparation, on croit le ministère anglois trop raisonnable pour ne pas juger par lui-même que le Roi est bien fondé de son côté à ne pas reconnoître la juridiction desdits tribunaux pour compétente, bien loin de se soumettre à leurs injustes décisions.

§ 49. Et comme les ministres anglois se sont toujours obstinés, toutes les fois qu'on leur a fait des représentations au nom du Roi, à renvoyer ces sortes d'affaires à la décision de leurs tribunaux et de leurs lois, Sa Majesté Prussienne, jouissant des mêmes droits et prérogatives que Sa Majesté Britannique, s'est vue contrainte par là de commettre dans ses États l'examen des griefs de ses sujets à ses propres tribunaux. Le Roi à cet effet a établi une commission, composée de conseillers versés dans les affaires de justice aussi bien que dans celles de commerce, chargée, sous la direction de quatre de ses ministres, d'examiner les griefs de ses sujets, selon les lois du droit des gens universellement reçu, et de constituer en conscience et selon leur devoir un quantum précis et liquide, de ce à quoi les dommages de ses sujets peuvent monter.

As the English Ministers have arrogated to themselves the power of deciding these questions by their own courts, the King of Prussia has been obliged to follow their example.

§ 50. C'est aussi ce que la commission a effectivement exécuté ; elle a exigé des preuves légales de chaque

liquidation des dépens ; elle a modéré d'une manière équitable les articles qui paroissent surchargés ; elle a débouté de leur prétention ceux des plaignants qui n'ont pas su les vérifier dans les formes, et par conséquent elle a agi en tout et rendu justice sans aucun égard à la personne et avec la plus grande impartialité.

QUESTION VI

Whether the King of Prussia was not justified in indemnifying his subjects out of the moneys due to British subjects.

Et enfin, si, au contraire, le Roi n'est pas pleinement fondé de déférer à l'arrêt que ses sujets l'ont supplié de mettre sur les capitaux anglois, stipulés par la paix de Breslau et de Dresde, qui se trouvent entre ses mains, pour procurer à ses sujets les dédommagemens et la réparation convenables des violences exercées contre eux par les armateurs anglois, en dépit du droit des gens et malgré les déclarations formelles et réitérées par le ministère anglois ; et si le Roi n'est pas en droit d'indemniser ses sujets sur ces capitaux, puisqu'on leur a si longtemps dénié toute la justice qu'ils étoient fondés de demander.

§ 51. On a prouvé, dans ce qui précède, que les sujets du Roi ont des prétentions légitimes à former contre les armateurs anglois ; on y a vu que depuis 1745 jusqu'à présent on n'a pu obtenir là-dessus aucune satisfaction du ministère anglois ; et enfin on vient de voir tout à l'heure, que le Roi a fait examiner par une commission établie dans ses états le quantum précis desdites prétentions, lequel monte NB. à 194,725 écus, 14 gros, 5 deniers, y compris les intérêts jusqu'au 10 juillet 1752. Il ne reste donc plus que d'examiner les voies par lesquelles on puisse procurer aux sujets prussiens la satisfaction et le dédommagement de leurs pertes.

The right to reprisals.

§ 52. C'est une règle établie et par la raison et par le droit des gens, que lorsqu'un souverain dénie aux sujets d'un autre la justice que ce dernier le fait requérir et solliciter de leur rendre, ou qu'il ne leur rend pas bonne justice, tant le souverain que ses sujets en sont responsables en leur pur et privé nom.

Grot. Droit de la Guerre et de la Paix, L. 3, c. 2, § 2. Il a été établi par le droit des gens que tous les biens des sujets d'un État seroient comme hypothéqués pour ce que l'État ou le chef de l'État doivent ou directement et par eux-mêmes, ou en tant que faute de rendre bonne justice, ils se sont rendus responsables d'une dette d'autrui.

Grotius,
his
opinion.

Grot. Droit de la Guerre et de la Paix, L. 3, c. 13, § 1, n. 2. Non seulement les biens du débiteur sont comme hypothéqués au créancier, mais encore ce qui appartient à ses sujets, qui sont comme répondant de la dette.

Grot. L. 3, c. 2, § 5 et 7. En ce cas-là on peut se saisir ou des personnes ou des effets mobilières des sujets du souverain, qui refuse de rendre justice. Cela n'est pas à la vérité autorisé par le droit de nature, mais l'usage l'a établi presque partout ;

où il allègue plusieurs exemples de l'antiquité.

§ 53. Ce principe du droit des gens est fondé sur la raison naturelle, parce que les sujets sont censés approuver le fait de leur souverain et souscrire à son jugement, d'où il s'ensuit naturellement qu'ils en répondent, et que, quand tout autre moyen manque, c'est à leur propre bien qu'on doit s'en prendre.

§ 54. Or, puisque le Roi se trouve avoir en mains certains capitaux appartenant à des sujets anglois, et qui doivent leur être payés à la décharge de la Silésie, personne ne peut désapprouver, si usant du droit des gens, et sur les instances faites par ses sujets, Sa Majesté arrête ces capitaux, et s'en sert pour les indemniser.

The King
of Prussia
therefore
has acted
in conform-
ity with
the law of
nations.

§ 55. Le ministère anglois a d'autant moins lieu de se récrier sur ce qu'on choisit un moyen si modéré, puisque lui-même dans un cas semblable, et avant d'avoir déclaré la guerre à l'Espagne, l'a suivi pendant plusieurs années.

§ 56. C'est à regret que le Roi se voit dans la nécessité d'en venir à cette extrémité, dont les suites retombent sur d'innocents membres d'une nation pour laquelle il a toujours eu toute la considération imaginable, extrémité

à laquelle il n'auroit jamais eu recours, s'il avoit eu d'autres moyens de procurer satisfaction à ses sujets.

§ 57. Le Roi, en agissant ainsi, ne fait que suivre les règles dictées par la plus exacte justice. Il ne peut, sans manquer à ses devoirs de souverain et à sa gloire, refuser de protéger efficacement ses sujets, qui n'ont commercé sur le pied qu'ils l'ont fait, qu'en se reposant sur la déclaration royale qui avoit pour fondement la parole donnée par les ministres anglois.

§ 58. Les sujets anglois qui sont les plus intéressés dans cette affaire, trouveront peut-être moyens, à l'aide du Parlement, d'inspirer au ministère anglois des sentiments plus équitables ou de forcer les armateurs au payement réel des sommes liquidées dont ils sont comptables aux sujets prussiens, à quel effet ceux-ci transportent dès ce moment aux rentiers intéressés à la dette de la Silésie tous les droits qu'ils ont contre les susdits armateurs.

Rejects the English view that his action cancels the guarantee given to him for Silesia.

§ 59. On ne comprend du tout point comment l'entend le ministère anglois, lorsqu'il prétend que l'Angleterre se trouveroit dégagée de la garantie de la Silésie, du moment que le payement de ces capitaux, garantis aux sujets anglois par les traités de paix de Breslau et de Dresde, et en vue desquels seulement la garantie de la Silésie avoit été accordée, seroit interrompu ; il semble que dans le cas en question le ministère anglois a de nouveau perdu de vue le droit des gens, car il n'est point question ici, ni de la précédente paix, ni du motif par lequel elle a été conclue ; mais d'une *nouvelle* offense faite après la conclusion de la paix, par les sujets anglois à ceux du Roi, et c'est cette *nouvelle* injure qui engage le Roi à user de représailles pour en tirer satisfaction.

The depredations of the English privateers began after the treaty of

§ 60. C'est un fait constant que ce ne fut qu'après la paix de Breslau de 1742 et celle de Dresde de 1745, confirmative de la précédente (par lesquelles d'un côté le Roi s'engagea à payer à des sujets anglois plus d'un million hypothéqué sur la Silésie, et d'autre part le roi de la Grande-Bretagne, comme compris dans la même paix,

se chargea de la garantie de ce traité) ce ne fut que depuis que les armateurs anglois commencèrent, malgré le droit des gens et les assurances positives du ministère de cette nation, à insulter tant les vaisseaux prussiens que les vaisseaux neutres sur lesquels les Prussiens avoient chargé des marchandises permises, qu'ils pillèrent les uns et traînèrent les autres avec violence dans des ports d'Angleterre, d'où après les avoir détenus des années entières, ils les ont relâchés à la fin, sans leur faire aucune satisfaction des dommages et fraix que la détention leur avoit causés, et en les condamnant même à ceux de capture.

Dresden
of 1745.

§ 61. Il est donc question ici d'une *nouvelle* offense, qui ne tire point son origine de la précédente guerre, et qui n'a point de connexité avec elle, mais qui demande par elle-même une *nouvelle* réparation.

§ 62. Le Roi, pour obtenir réparation de cette nouvelle offense, est fondé dans le droit des gens de s'en prendre aux capitaux des sujets anglois, qu'il se trouve avoir en mains, aussi longtems que ses sujets ne seront pas indemnisés. Voyez ci-dessus § 52, 53.

§ 63. La paix précédente ne reçoit par là aucune atteinte puisque, selon le droit des gens, la réparation d'une nouvelle offense peut être poursuivie (*salva pæce*) *sans interrompre la paix*.

Opinion
of
Grotius
cited.

§ 64. L'illustre Grotius décide nettement la question par un principe fondé sur la raison naturelle :

C'est une question (dit-il) qui se présente tous les jours, et qui est souvent débattue, quand c'est que la paix peut être regardée comme rompue, car autre chose est *fournir un nouveau sujet de guerre par une nouvelle offense, et autre chose est rompre la paix*.

Il y donne un exemple parallèle au cas que l'on vient d'examiner ici :

S'il arrive, qu'après la paix conclue, l'une des parties contractantes fait violence aux sujets de l'autre, et par conséquent *l'offense de nouveau*, la paix ne laisse pas

de subsister, mais alors la partie offensée peut NB. NB. (*salva pace*) *sans violer la paix*, recommencer la guerre pour ce nouveau sujet. Grot. *Droit de la Guerre et de la Paix*, L. 3, c. 20, § 28 et 32 et c. 20, § 32 et § 33, n. 3. § 65. Si donc la paix conclue entre deux parties en guerre subsiste même après que l'une des parties contractantes a souffert de nouveaux actes d'hostilité de la part de l'autre, à combien plus forte raison ne doit-on pas regarder la paix comme subsistante, lorsque ce n'est que le médiateur et le garant de cette paix qui par une nouvelle injure donne lieu à l'un des contractants, de mettre arrêt sur des choses stipulées dans cette paix, jusques à ce qu'il ait obtenu satisfaction de cette nouvelle injure ?

The
peace of
Aix-la-
Chapelle,
however,
renewed
the guar-
antee.

§ 66. Mais quand on s'aviserait de soutenir contre toute raison que du moins un pareil arrêt anéantiroit la garantie promise aux traités de Breslau et de Dresde, celle qui est stipulée à l'article 22 de la paix d'Aix-la-Chapelle du 18 octobre 1748, ne laisseroit pas de subsister toujours dans toute sa force, en tout cas le Roi se trouveroit aussi dégagé de celle qu'il a donnée à l'égard de la succession de la famille régnante en Angleterre, et de celle des États électoraux d'Hanovre.

§ 67. Il est donc clair, par tout ce que dessus, que malgré l'arrêt mis sur les capitaux anglois hypothéqués sur la Silésie, la paix de Breslau, et par conséquent la garantie du roi de la Grande-Bretagne et de l'Angleterre, qui y est contenue, subsistent en leur entier ; garantie, que le Roi, si l'occasion s'en présente, saura bien faire valoir en son temps.

The lists of Prussian and of other neutral ships, A and B, will be found in Appendixes 34 and 35.

CHAPTER VIII

NEWCASTLE'S REPLY TO MICHELL

THESE papers were referred to the Law Officers of the Crown, Sir George Lee, Dean of the Arches, Dr. G. Paul, Advocate-General, Sir Dudley Ryder,¹ Attorney-General, and Mr. William Murray,² Solicitor-General, who on January 18, 1753, presented their report. This, together with the draft of a reply in French to be addressed to Michell by Newcastle,³ and all the Prussian documents, were considered at a meeting of a Committee of the Privy Council held at Newcastle House on February 6, at which the former two documents were approved. A resolution was also adopted that copies of the reply and report should be sent to the diplomatic representatives at Paris, Madrid, Vienna, St. Petersburg, and the Hague, for presentation to the courts to which they were accredited.⁴ Special instructions, it was agreed, should be addressed to Lord Albemarle, the Ambassador at Paris, to Benjamin Keene at Madrid and Keith at Vienna. The latter, together with the ministers at the Hague and St. Petersburg, were to intimate that if any attack should be made upon his Majesty [evidently on his Hanoverian dominions is meant] he doubted not he might depend upon the immediate performance of their defensive engagements to himself.

Papers referred to the Law Officers.

Report and draft note to Michell considered by the Government.

The reply to Michell was to the following effect :

Reply to Michell.

The King found the contents of the memorial presented on November 23, with its annexes, so extraordinary that he was not willing to reply to it, nor take any resolution

¹ Baron Ryder in 1756; Lord Chief Justice of the King's Bench, 1754.

² Afterwards Lord Chief Justice of England, and created Baron Mansfield in 1756.

³ App. 36.

⁴ App. 37.

thereon, until he had had the memorial as well as the *Exposition des motifs*, &c., which was presented shortly afterwards, maturely considered, and until he should be in a position to exhibit in their true light the proceedings of the British Admiralty Courts; in order that his Prussian Majesty and every one else might be accurately informed of the regularity of their conduct, in which they appeared to have followed the only method ever practised by nations, where disputes of this kind could happen, and to have conformed themselves strictly to the law of nations, universally recognized as the only rule in such cases when there is nothing to the contrary stipulated by particular treaties between the Powers concerned.

Irregularity of the proceedings of the Prussian Special Commission.

The reply proceeds to say that the examination will so clearly show the irregularity of the proceedings of the persons to whom this affair was referred at Berlin, that it is anticipated his Prussian Majesty will revoke the detention of the sums secured on Silesia, the reimbursement of which was an express article of the treaties by which that duchy was ceded. The writer is therefore ordered to send to Monsieur Michell the report made on the above-mentioned papers by the Law Officers, which is founded on the principles of the law of nations received and acknowledged in all countries. The points on which the whole affair turns are :

Prize cases are cognizable only by the prize courts of the captor, which decide according to the law of nations and treaties. The decisions

First, That prize cases are cognizable only in the courts of the Power by which the capture was made, and that to erect foreign courts or jurisdictions elsewhere is contrary to the known practice of all nations in the like cases ;

Secondly, That the Admiralty Courts, which include the inferior courts and the courts of appeal, decide according to the universal law of nations only, except in cases of particular treaties between the Powers concerned, which have altered the dispositions of the law of nations, or deviate from them.

Thirdly, That the decisions in the cases complained of appear from the Report to have been made solely upon the

rule prescribed by the law of nations, a rule clearly established by the constant practice of other nations, and by the authority of the greatest men ;

com-
plained
of were
just.

Fourthly, That in the case in question it cannot be pretended that there is any treaty which has altered this rule, or by virtue of which the parties could claim any privilege which the law of nations does not allow them ;

No treaty
with
Prussia.

Fifthly, That as in the present case no just grievance nor the least reason can be alleged for saying that justice has been denied when regularly demanded, and as in most of the cases complained of it was the complainants themselves who neglected the only proper means of procuring it, there cannot be any just cause on which reprisals could be founded ;

No
ground
for re-
prisals.

Sixthly, That even supposing reprisals might be justified by the known and general rules of the law of nations, it appears from the Report, and indeed from considerations which must occur to everybody, that sums due to the subjects of the King by the Empress-Queen, and secured by her upon Silesia, payment of which sums his Prussian Majesty took upon himself by the treaty of Breslau and by that of Dresden, in consideration of the cession of that country, and which by virtue of that very cession ought to have been fully and absolutely discharged in the year 1745,¹ that is to say, one year before any of the facts complained of did happen, could not either in justice or reason, or according to what is the constant practice between all the most respectable Powers, be seized or stopped by way of reprisals.

The
moneys
due on
the debt
to private
persons
could not
be made
the sub-
ject of re-
prisals.

The reply also observes that the debt was originally contracted by the Emperor Charles VI, who engaged to give the creditors such further security as they might afterwards reasonably ask, and this condition had been

¹ The completion of payment of the debt contracted by the Emperor Charles VI should have taken place on January 10, 1745/6. The assertion in the text is not quite exact, for the *Dorothee Sophie*, No. 14 in the list of Prussian ships, was taken just one month earlier.

very ill performed by a transfer of the debt, which had put it in the power of a third person to seize and confiscate it.

It further asserts that in the late war the Admiralty Courts did not avail themselves of a state of open war to seize or detain the effects of an enemy where it appeared that those effects were wrongfully taken before the war. It concludes by suggesting that what has passed at Berlin has been occasioned solely by the ill-grounded information which his Prussian Majesty had received of these matters, and that when he should see them in their true light, his natural disposition in favour of justice and equity would induce him to rectify the steps which this information had occasioned, and to complete the payment of the debt charged on the Duchy of Silesia, conformably to his engagements in that respect.

The Report of the Law Officers is reprinted *verbatim*, as has been done with the *Exposition des motifs*, etc., as these two documents set forth all the arguments relied on respectively by the two governments.

CHAPTER IX

REPORT OF THE LAW OFFICERS OF THE CROWN¹

To the KING'S most Excellent MAJESTY. *May it please your Majesty,*

Materials
of the
Report.

IN Obedience to your Majesty's Commands, signified to us by his Grace the Duke of *Newcastle*, we have taken the Memorial, Sentence of the *Prussian* Commissioners, and Lists marked A and B, which were delivered to his Grace by Mons. *Michell*, the *Prussian* Secretary here, on the 23d of *November* last; and also the printed *Exposition des Motifs, &c.* which was delivered to his Grace the 13th of *December* last, into our serious Consideration. And we have directed the proper Officer to search the Registers of the Court of Admiralty, and inform us how the Matter appeared from the Proceedings there, in Relation to the Cases mentioned in the said Lists A and B, which he has accordingly done.

And your Majesty having commanded us to report our Opinion, concerning the Nature and Regularity of the Proceedings, under the *Prussian* Commission, mentioned in the said Memorial; and of the Claim or Demand pretended to be founded thereupon; and how far the same

¹ Dr. R. Koser quotes in a foot-note (*Preuss. Staatsschr.* ii. 469) a report from the Prussian Minister at the Hague that: 'On trouve entre autres bien extraordinaire et même un peu indécent que la cour de Londres ait répondu à un mémoire en forme et sur l'*Exposition des motifs* par une simple communication du rapport de quelques juges et jurisconsultes particuliers. Les partisans anglois voudroient soutenir que Sa Majesté Britannique n'a choisi cette voie que pour mettre d'autant plus de modération dans cette réponse.'

This criticism, from whomever it may have emanated, can hardly be justified in the face of the very full statement in Newcastle's Note enclosing the report of the Law Officers of the Crown, who were not merely 'quelques juges et jurisconsultes particuliers'. They were at least of equal rank with the compilers of the 'Sentence' and of the '*Exposition des motifs*'.

are consistent with, or contrary to, the Law of Nations, and any Treaties subsisting between your Majesty and the King of *Prussia*, the established Rules of Admiralty Jurisdiction, and the Laws of this Kingdom :

For the greater Perspicuity, we beg leave to submit our Thoughts upon the whole Matter in the following Method :

Method
of the
Report.

1st, To state the Clear Established Principles of Law.

2dly, To state the Fact.

3dly, To apply the Law to the Fact.

4thly, To observe upon the Questions, Rules and Reasonings alledged in the said Memorial, Sentence of the *Prussian* Commissioners, and *Exposition des Motifs &c.* which carry the Appearance of Objections, to what we shall advance upon the former Heads.

First, *as to the LAW.*

The law
of prize.

When two Powers are at war, they have a Right to make Prizes of the Ships, Goods, and Effects, of each other upon the High Seas : Whatever is the Property of the Enemy, may be acquired by Capture at Sea ; but the Property of a Friend, cannot be taken, provided he observes his Neutrality. Hence the Law of Nations has established,

That the Goods of an Enemy, on Board the Ship of a Friend, may be taken.

That the lawful Goods of a Friend, on Board the Ship of an Enemy, ought to be restored.

That Contraband Goods, going to the Enemy, tho' the Property of a Friend, may be taken as Prize ; because supplying the Enemy, with what enables him better to carry on the War, is a Departure from Neutrality.

By the Maritime Law of Nations, universally and immemorially received, there is an established Method of Determination, whether the Capture be, or be not, lawful Prize.

Judicial
proceed-
ings in
court of

Before the Ship, or Goods, can be disposed of by the Captor, there must be a regular judicial Proceeding, wherein both Parties may be heard, and Condemnation

thereupon as Prize, in a Court of Admiralty, judging by the Law of Nations and Treaties.

the State
to which
the
captor
belongs.

The proper and regular Court for these Condemnations, is the Court of that State, to whom the Captor belongs.

The Evidence to acquit or condemn, with, or without, Costs or Damages, must, in the first Instance, come merely from the Ship taken, viz. the Papers on Board, and the Examination on *Oath* of the Master and other Principal Officers ; for which Purpose, there are Officers of Admiralty in all the considerable Sea Ports of every Maritime Power at War, to examine the Captains, and other Principal Officers of every Ship, brought in as Prize, upon General and Impartial Interrogatories : If their [*sic*] don't appear from thence Ground to condemn, as Enemies Property, or Contraband Goods going to the Enemy, there must be an Acquittal, unless from the aforesaid Evidence, the Property shall appear so doubtful, that it is reasonable to go into further Proof thereof.

A Claim of Ship, or Goods, must be supported by the Oath of some body, at least as to Belief.

The Law of Nations requires good Faith : Therefore every Ship must be provided with compleat and genuine Papers ; and the Master at least should be privy to the Truth of the Transaction.

To enforce these Rules, if there be false or colourable Papers ; if any Papers be thrown over-board ; if the Master and Officers examined in *Preparatorio* grossly prevaricate ; if proper Ship's Papers are not on Board ; or if the Master and Crew can't say, whether the Ship or Cargo be the property of a Friend or Enemy, the Law of Nations allows, according to the different Degrees of Misbehaviour, or Suspicion, arising from the Fault of the Ship taken, and other Circumstances of the Case, Costs to be paid, or not to be received, by the Claimant, in Case of Acquittal and Restitution. On the other Hand, if a Seizure is made, without probable Cause, the Captor is adjudged to pay Costs and Damages : For which Purpose,

Treaties
cited.

all Privateers are obliged to give Security for their good Behaviour ; and this is referred to, and expressly stipulated by many Treaties.*

Though from the Ships Papers, and the preparatory Examinations, the Property don't sufficiently appear to be Neutral, the Claimant is often indulged with Time, to send over Affidavits to supply that Defect : If he will not shew the Property, by sufficient Affidavits, to be Neutral, it is presumed to belong to the Enemy. Where the Property appears from Evidence not on Board the Ship, the Captor is justified in bringing her in, and excused paying Costs, because he is not in Fault ; or, according to the Circumstances of the Case, may be justly intitled to receive his Costs.

Court of
Appeal.

If the Sentence of the Court of Admiralty is thought to be erroneous, there is in every Maritime Country a superior Court of Review, consisting of the most considerable Persons, to which the Parties, who think themselves aggrieved, may Appeal ; and this superior Court judges by the same Rule which governs the Court of Admiralty, *viz.* The Law of Nations, and the Treaties subsisting with that Neutral Power, whose Subject is a Party before them.

If no Appeal is offered, it is an Acknowledgement of the Justice of the Sentence by the Parties themselves, and conclusive.

Treaties
cited.

This Manner of Tryal and Adjudication is supported, alluded to, and inforced, by many Treaties.†

* Treaty between *England* and *Holland*, 17 Feb. 1668. Art. 13.—Treaty 1 Dec. 1674. Art. 10.—Treaty between *England* and *France* at *St. Germain's*, 24 Feb. 1677. Art. 10.—Treaty of Commerce at *Ryswick*, Sept. 20, 1697. between *France* and *Holland*, Art. 30.—Treaty of Commerce at *Utrecht*, 31 March, 1713. between *Great Britain* and *France*, Art. 29.

† As appears, with respect to Courts of Admiralty adjudging the Prizes taken by those of their own Nation, and with respect to the Witnesses to be examined in those Cases, from the following Treaties.—Treaty between *England* and *Holland*, 17 Feb. 1668. Art. 9. and 14.—Treaty 1 Dec. 1674. Art. 11.—Treaty 29 April 1689. Art. 12, 13.—

In this Method, all Captures at Sea were try'd, during the last War, by *Great Britain, France and Spain*, and submitted to by the neutral Powers. In this Method, by Courts of Admiralty acting according to the Law of Nations, and particular Treaties, all Captures at Sea have immemorially been judged of, in every Country of *Europe*. Any other Method of Tryal would be manifestly unjust, absurd and impracticable.

No other method of trying prize cases,

Tho' the Law of Nations be the general Rule, yet it may, by mutual Agreement between two Powers, be varied or departed from ; and where there is an Alteration or Exception, introduced by particular Treaties, that is the Law between the Parties to the Treaty ; and the Law of Nations only governs so far as it is not derogated from by the Treaty.

Right of search in time of war.

Thus by the Law of Nations, where two Powers are at War, all Ships are liable to be stopped, and examined to whom they belong, and whether they are carrying Contraband to the Enemy : But particular Treaties have enjoined a less Degree of Search, on the Faith of producing solemn Passports, and formal Evidences of Property, duly attested.

Treaties can vary this, as also the list of contraband, or free goods of an enemy on board of a neutral ship, &c.

Treaty between *England and Spain*, 23 May, 1667. Art. 23.—Treaty of Commerce at *Ryswick*, 20 Sept. 1697. between *France and Holland*, Art. 26 and 31.—Treaty between *England and France*, 3 Nov. 1655. Art. 17 and 18.—Treaty of Commerce between *England and France* at *St. Germain's*, 29 March, 1632. Art. 5 and 6.—Treaty at *St. Germain's*, 24 Feb. 1677. Art. 7.—Treaty of Commerce between *Great Britain and France*, at *Utrecht*, 31 March, 1713. Art. 26 and 30.—Treaty between *England and Denmark*, 29 Nov. 1669.¹ Art. 23 and 34. *Heineccius*, who was Privy-Councillor to the King of *Prussia*, and held in the greatest Esteem, in his Treatise *de Navibus ob vecturam velilarum mercium commissis*. Cap. 2. Sect. 17 and 18, speaks of this Method of Tryal.

Heineccius cited.

With Respect to Appeals or Reviews : From Treaty between *England and Holland*, 1 Dec. 1674. Art. 12, as it is explained by Art. 2, of the Treaty at *Westminster*, 6 Feb. 1715–16.—Treaty between *England and France*, at *St. Germain's*, 24 Feb. 1677, Art. 12.—Treaty of Commerce at *Ryswick*, 20. Sept. 1697, between *France and Holland*, Art. 33.—Treaty of Commerce at *Utrecht*, 31 March, 1713, between *Great Britain and France*, Art. 31 and 32, and other Treaties.

¹ This date is wrong. The treaty was signed July 11, 1670.

Particular Treaties too have inverted the Rule of the Law of Nations, and, by Agreement, declared the Goods of a Friend, on Board the Ship of an Enemy, to be Prize ; and the Goods of an Enemy, on Board the Ship of a Friend, to be free, as appears from the Treaties already mentioned, and many others.*

So likewise, by particular Treaties, some Goods, reputed Contraband by the Law of Nations, are declared to be free.

If a Subject of the King of *Prussia* is injured by, or has a Demand upon, any Person here, he ought to apply to your Majesty's Courts of Justice, which are equally open and indifferent to Foreigner or Native : so *vice versa*, if a Subject here is wronged by a Person living in the Dominions of his *Prussian* Majesty, he ought to apply for Redress in the King of *Prussia's* Courts of Justice.

If the Matter of Complaint be a Capture at Sea during War, and the Question relative to Prize, he ought to apply to the Judicatures established to try these Questions.

Condi-
tions on
which re-
prisals
are
allowed
by the
law of
nations.

The Law of Nations, founded upon Justice, Equity, Convenience, and the Reason of the Thing, and confirmed by long Usage, don't allow of Reprisals, except in Case of violent Injuries, directed or supported by the State, and Justice, absolutely denied, *in Re minime dubia*, by all the Tribunals, and afterwards by the Prince.†

Where the Judges are left free, and give Sentence according to their Conscience, though it should be erroneous, that would be no Ground for Reprisals. Upon doubtful Questions, different Men think and judge differently ; and all a Friend can desire, is, that Justice should be as impartially administred to him, as it is

* Particularly by the aforesaid Treaty between *England* and *Holland*, 1 Dec. 1674, and the Treaty of *Utrecht*, between *Great Britain* and *France*.

† *Grotius de Jure Belli ac Pacis*, Lib. 3. Cap. 2. Sect. 4, 5.

Treaty between *England* and *Holland*, 31 July, 1667. Art. 31. Reprisals shall not be granted, till Justice has been demanded according to the ordinary Course of Law.

Treaty of Commerce at *Ryswick*, 20 Sept. 1697. between *France* and *Holland*, Art. 4. Reprisals shall not be granted, *but on manifest Denial of Justice*.

to the Subjects of that Prince, in whose Courts the Matter is try'd.

Secondly, *As to the FACT.*

We have subjoined hereto two Lists, tallying with those marked A. and B., which were delivered to His Grace the Duke of *Newcastle*, by Mons. *Michell*, with the said Memorial, the 23d of *November* last ; and are also printed at the End of the said *Exposition des Motifs, &c.* From whence it will appear, that as to the List A. which contains 18 Ships and their Cargoes,

Analysis
of Lists A
and B de-
livered by
Michell.

Four, if ever taken, were restored by the Captors themselves, to the Satisfaction of the *Prussians*, who never have complained in any Court of Justice here. 4

One was restored by Sentence, with full Costs and Damages, which were liquidated at 280*l.* 12*s.* 1*d.* Sterling. 1

Three ships were restored by Sentence, with Freight, for such of the Goods as manifestly belonged to the Enemy, and were condemned. 3

Four Ships were restored by Sentence, but the Cargoes or Part of them, condemned as Prize, or Contraband, and are not now alledged, in the Lists A. or B. to have been *Prussian* property. 4

Five Ships and Cargoes were restored by Sentence, but the Claimant subjected to pay Costs, because, from the Ship-Papers, and Preparatory Examinations, there was Ground to have condemned : and the Restitution was decreed, merely on the Faith of Affidavits afterwards allowed. 5

One Ship and Cargo was restored by Sentence upon an Appeal, but, from the Circumstances of the Capture, without Costs on either Side. $\frac{1}{18}$

There need no Observations upon this List. As to the eight Cases first above mentioned, there cannot be the Colour of Complaint.

As to the four next, the Goods must be admitted to have been rightly condemned, either as Enemy's Property, or Contraband, for they are not now mentioned in the Lists A. or B.

If Contraband, the Ship could have neither Freight nor Costs, and the Sentences were favourable, in restoring the Ships, upon Presumption that the Owners of the Ships were not acquainted with the Nature of the Cargo, or Owners thereof. If Enemy's Property, the Ships could not be entitled to Freight, because the Bills of Lading were false, and purported the Property to belong to *Prussians*.

The Ships could not be intitled to Costs, because the Cargoes, or Part of them, being lawful Prize, the Ships were rightly brought in.

As the six remaining Ships and Cargoes were restored, the only Question must be, upon the Paying or not Receiving Costs, which depends upon the Circumstances of the Capture, the Fairness of the Ship's Documents, and Conduct of her Crew; and neither the *Prussian* Commissioners, the said Memorial, or said *Exposition des Motifs*, &c. alledge a single Reason, why, upon the particular Circumstances of these Cases, the Sentences were wrong.

List B. As to the List B.

Every Ship, on Board which the Subjects of *Prussia* claim to have had Property, was bound to, or from, a Port of the Enemy; and many of them appeared clearly to be, in Part, laden with the Goods of the Enemy, either under their own, or fictitious Names.

In every Instance, where it is suggested that any Part of the Cargo belong'd to a *Prussian* Subject, though his Property did not appear from the Ship's Papers, or Preparatory Examinations, which it ought to have done, sufficient Time was indulged to that *Prussian* Subject, to make an Affidavit, that the Property was *bona fide* in him: And the Affidavit, of the Party himself, has been received as Proof of the Property of the *Prussian*, so as to intitle him to Restitution.

Where the Party will not swear at all, or swears evasively, it is plain he only lends his Name, to cover the Enemy's Property, as often came out to be the Case beyond the Possibility of Doubt.

It appears by a Letter 29 May/9 June 1747,¹ from Mons. *Andriè* to his *Prussian* Majesty, exhibited in a Cause, and certified to be a true Extract by Mons. *Michell* under his Hand, that this colourable Manner, of screening the Goods of the Enemy, was stated in the following Words.

Andriè to Frederick in 1744 warning Prussian subjects not to carry enemy goods for enemy account.

' Your Majesty's Subjects ought not to load on Board Neutral Ships, any Goods really belonging to the Enemies of *England*, but to load them for their own Account, whereby they may safely send them to any Country they shall think proper, without running any Risk: Then, if Privateers commit any Damage to the Ships belonging to your Majesty's Subjects; *you may depend on full Justice being done here, as in all the like Cases hath been done.*'

List B, contains Thirty-three Cases,

Two of them never came before a Court of Justice in England, but (if taken) were restored by the Captors themselves, to the entire Satisfaction of the Owners. 2

In Sixteen of them, the Goods claimed by the *Prussian* Subjects, appear to have been actually restored, by Sentence, to the Masters of the Ships in which they were laden; and, by the Customs of the Sea, the Master is in the Place of the Lader, and answerable to him. 16

In Fourteen of the Cases, the *Prussian* Property was not verified, by the Ship's Papers, or preparatory Examinations, or Claimant's own Affidavit, which he was allowed Time to make. 14

And the other Cause, with respect to Part of the Goods, is still depending, neither Party having moved for Judgment.* And so conscious were the Claimants, that the Court of Admiralty did Right, there is not an Appeal, in a single Instance, in List B, and but one, in List A. 1
33

¹ Misprint in the original for 1744.

* The *Prussian* has since applied for Judgment on the 29th of January, and obtained Restitution.

Thirdly, *To apply the Law to the FACT.*

The Sixth Question, in the said *Exposition des Motifs*, &c. states the Right of Reprisals to be, *puisqu'on leur a si long Tems deniè toute la Justice, qu'ils étoient fondes [sic] de demander.*

The as-
sertion
that
Prussian
subjects
had been
denied
justice
refuted.

The said Memorial founds the Justice, and Propriety of his *Prussian Majesty's* having Recourse to Reprisals ; because his Subjects, *n'ont pu obtenir jusqu'à present aucune Justice des Tribunaux Anglois qu'ils ont reclamés, ou du Gouvernement auquel ils ont porté leurs Plaintes.* And in another Part of the Memorial it is put, *apres avoir en vain demandè des Reparations de ceux qui Seuls pouvoient les faire.*

The contrary of all which is manifest from the above State, and Lists hereto annexed.

In Six of the Cases specified, If such Captures ever were made, the *Prussian* Subjects were so well satisfied with the Restitution made by the Captors, that they never complained in any Court whatsoever of this Kingdom.

The rest were judged of, by a Court of Admiralty, the only proper Court to decide of Captures at Sea, both with respect to the Restitution, and the Damages and Costs ; acting according to the Law of Nations, the only proper Rule to decide by : And Justice has been done by the Court of Admiralty so impartially ; that all the Ships, alledged in List A, to have been *Prussian*, were restored ; and all the Cargoes, mentioned in either List, A or B, were restored, excepting Fifteen, one of which is still undetermined.

And, in all the Cases in both Lists, Justice was done, so entirely to the Conviction of the private Conscience of the *Prussian* claimants, that they have acquiesced under the Sentences, without appealing, except in one single Instance, where the Part of the Sentence complained of was reversed, though the *Prussian* Claimants must know, that, by the Law of Nations, they ought not to complain to their own Sovereign, till Injustice, *in Re minime dubid*,

was finally done them, past Redress ; and though they must know, that Rule of the Law of Nations held more strongly upon this Occasion, because the Property of the Prize was given to the Captors, and ought, therefore, to be litigated with them.

The *Prussian*, who, by his own Acquiescence, submits to the Captors having the Prize, cannot afterwards with Justice make a Demand upon the State. If the Sentence was wrong, it is owing to the Fault of the *Prussian*, that it was not redressed. But, it is not attempted to be shewn even now, that these Sentences were unjust in any Part of them, according to the Evidence and Circumstances appearing before the Court of Admiralty, and that is the Criterion.

For as to the *Prussian* Commission to examine these Cases, *ex parte*, upon new Suggestions ; it never was attempted in any Country of the World before : Prize, or not Prize, must be determined by Courts of Admiralty, belonging to the Power whose Subjects make the Capture : Every Foreign Prince in Amity, has a Right to Demand that Justice shall be done his Subjects in those Courts, according to the Law of Nations, or particular Treaties, where any are subsisting. If *in Re minime dubia* these Courts proceed upon Foundations directly opposite to the Law of Nations, or subsisting Treaties, the Neutral State has a Right to complain of such Determination.

The
Prussian
Commis-
sion de-
cided on
ex parte
state-
ments.

But there never was, nor ever can be, any other Equitable Method of Tryal. All the Maritime Nations of *Europe*, have, when at War, from the earliest Times, uniformly proceeded in this Way, with the Approbation of all the Powers at Peace. Nay, the Persons acting under this extraordinary and unheard of Commission from his *Prussian* Majesty, don't pretend to say, that in the Four Cases of Goods condemned here, for which Satisfaction is demanded in List A, the Property really belonged to *Prussian* Subjects : But they profess to proceed upon

this Principle, evidently *false*, that, tho' these Cargoes belonged to the Enemy, yet being on Board *any Neutral Ship*, they were not liable to Enquiry, Seizure, or Condemnation.

Fourthly, *From the Questions, Rules, Reasonings, and Matters alledged in the said Memorial, Sentence of the Prussian Commissioners, and Exposition des Motifs, &c. the following Propositions may be drawn, as carrying the Appearance of Objections, to what has been above laid down.*

First Proposition.

Prussian
assertion
that
enemy's
goods
cannot be
taken on
a neutral
ship an-
swered.

That by the Law of Nations, the Goods of an Enemy cannot be taken on Board the Ship of a Friend; and this the Prussian Commissioners lay down as the Basis of all they have pretended to do.

Answer. The Contrary is too Clear to admit of being disputed. It may be proved, by the Authorities of every Writer upon the Law of Nations; some of different Countries are referred to.* It may be proved by the constant Practice, Antient and Modern, but the General

* *Il Consolato del Mare*, cap. 273, expressly says, The Enemy's Goods, found on Board a Friend's Ship, shall be confiscated. And this is a Book of great Authority.

GROTIUS *de Jure Belli ac Pacis*, lib. iii, cap. i, Section 5, numero 4, in the Notes, cites this Passage, in the *il Consolato*, and in his Notes, lib. iii, cap. 6, Sect. 6.

LOCZENIUS *de Jure Maritimo*, lib. ii, cap. 4, Sect. 12.

VOET *de Jure Militari*, cap. 5, nu. 21.

HEINECCIUS, the learned Prussian before quoted, *de Navibus ob Vecturam vetitarum Mercium commissis*, Cap. 2, Sect. 9, is clear and explicit upon this point.

BYNKERSHOECK, *Quaestiones Juris Publici*, lib. i, cap. 14, per totum.

ZOUCH (an Englishman) in his Book *de Judicio inter Gentes*, pars 2, Sect. 8, numero 6.

Treaty between *Great Britain* and *Sweden* 23 Oct. 1661, Art. 12 and 13, Treaty between *Great Britain* and *Denmark*, 29 Nov. 1669, Art. 2 d,— And the Passport or Certificate, settled by that Treaty, are Material as to this Point.

Rule cannot be more strongly proved, than by the Exception, which particular Treaties have made to it.*

Second Proposition.

It is alledged that Lord Carteret, in 1744, by two Verbal Declarations, gave Assurances in your Majesty's Name, that nothing on Board a Prussian Ship should be Seized, except Contraband; consequently, that all Effects, not Contraband, belonging to the Enemy, should be free, and that these Assurances were afterwards confirmed in Writing by Lord Chesterfield, the 5th of January, 1747.

Assurances attributed to Carteret do not warrant the inferences drawn from them.

Answer. The Fact makes this Question not very material, because there are but four Instances, in Lists A or B, where any Goods, on Board a *Prussian Ship*, have been Condemned; and no Satisfaction is pretended to be demanded, for any of those Four Cargoes in Lists A and B. However it may be proper to shew how groundless this Pretence is.

Taking the Words, alledged to have been said by Lord *Carteret*, as they are stated; They don't warrant the Inferences endeavoured to be drawn from them. They import no New Stipulation, different from the Law of Nations; but expressly profess to treat the *Prussians*, upon the same Foot with the Subjects of other Neutral Powers under the like Circumstances; *i. e.* with whom there was no particular Treaty. For the Reference to other Neutral Powers, cannot be understood to communicate the Terms of any particular Treaty. It is not so said. The Treaties with *Holland, Sweden, Russia, Portugal, Denmark, &c.* all differ. Who can say which was communicated? There would be no Reciprocity; the King of *Prussia* don't agree to be bound by the

* Treaty between *France* and *England*, 24 Feb. 1677, Art. 8. Treaty of *Utrecht*, between *France* and *England*, 1713, Art. 17. Treaty between *England* and *Holland*, 17 Feb. 1668, Art. 10. Treaty between *England* and *Holland*, 1 Dec. 1674, Art. 8. Treaty between *England* and *Portugal*, 10 July, 1654, Art. 23. Treaty between *France* and the States General at *Utrecht*, 11 April, 1713, Art. 26.

Clauses, to which other Powers, have, by their respective Treaties, agreed. No *Prussian* Goods, on Board an Enemy's Ship, have ever been Condemned here; and yet they ought, if the Treaties with *Holland* were to be the Rule between *Great Britain* and *Prussia*; nay, if these Treaties were to be the Rule, all now contended for, on the Part of *Prussia*, is clearly wrong. Because, by Treaty, the Dutch, in the last Resort, are to apply to the Court of Appeal here.

Anglo-Dutch
treaty of
1715-16
explaining
Art. 12 of the
treaty of
1674.

Treaty of Alliance between Great Britain and Holland, at Westminster the 6th of Feb. 1715-16, Article II.

'Whereas some Disputes have happened, touching the Explanation of the 12th Article of the Treaty Marine in 1674. it is agreed and concluded, for deciding any Difficulty upon that Matter, to declare, by these Presents, that by the Provisions mentioned in the said Article, are meant those which are received by Custom in *Great Britain* and in the *United Provinces*, and always have been received, and *which have been Granted, and always are Granted, in the like Case, to the Inhabitants of the said Countries, and to every Foreign Nation.*'

Lord *Carteret* is said twice to have refused, in which Monsieur *Andrié acquiesces*, to give any Thing in Writing, as not usual in *England*.

Supposing the Conversations to mean no more, than a Declaration of Course, that Justice should be done to the *Prussians*, in like Manner as to any other Neutral Power, with whom there was no Treaty; there was no Occasion for Instruments in Writing; because in *England* the Crown never interferes with the Course of Justice. No Order or Intimation is ever given to any Judge. Lord *Carteret* therefore knew that it was the Duty of the Court of Admiralty to do equal Justice, and that they would, of themselves, do what he said to Monsieur *Andrié*.

Had it been intended, by Agreement, to introduce, between *Prussia* and *England*, a Variation, in any Par-

ticular, from the Law of Nations ; and consequently, a New Rule, for the Court of Admiralty, to decide by ; it could only be done by a Solemn Treaty, in Writing, properly Authorized, and Authenticated. The Memory of it could not otherwise be preserved ; the Parties interested, and the Courts of Admiralty could not, otherwise, take Notice of it.

But Lord *Chesterfield's* Confirmation, in a Letter of the 5th of *January 1747*, being relied upon ; the Books of the Secretary's Office have been searched, and the Letter to Mons. *Mitchell* is found, which is *verbatim* as follows.

' à *Whitehall*, le 5 *Janv*°. 1747-8.

' *Monsieur*,

Chesterfield's
letter to
Michell.

' AYANT eu l'Honneur de recevoir les Ordres du Roy sur ce qui a formé le sujet du Memoire, que vous m'avez remis, du 8 de ce *Mois*, n.s. Je n'ai pas voulu tarder à vous informer que sa Majesté, pour ne rien omettre, par où Elle peut temoigner ses Attentions envers le Roy, votre Maitre, ne fait nulle Difficulté de declarer qu'Elle n'a jamais eu l'Intention, ni ne l'aura jamais, de donner le moindre Empechement à la Navigation des sujets *Prussiens*, tant qu'ils auront soin d'exercer leur Commerce d'une Maniere licite, et conformément à l'ancien Usage établi et reconnu parmi les Puissances Neutres.

' Que Sa Majesté *Prussienne* ne peut pas ignorer, qu'il y a des Traités de Commerce qui subsistent actuellement, entre la *Grande-Bretagne*, et certains Etats Neutres, et qu'au Moyen des Engagemens formellement contractés de Part et d'autre, par ces mêmes Traités, tout ce qui regarde la Maniere d'exercer leur Commerce reciproquement, a été finalement constaté et réglé.

' Qu'en même tems il ne paroît point, qu'aucun Traité de la Nature susdite existe à present, ou a jamais existé, entre Sa Majesté et le Roy de *Prusse* ; mais, que pourtant, cela n'a jamais empêché que les Sujets *Prussiens* n'ayent été favorisés par *L'Angleterre*, par raport [*sic*] à leur

Navigation, autant que les autres Nations Neutres : Et cela étant, Sa Majesté ne suppose pas, que l'Idée [*sic*] du Roy votre Maitre, seroit d'exiger d'Elle des Distinctions, encore moins des Preferences, en faveur de ses Sujets à cet égard.

' Que de plus Sa Majesté *Prussienne* est trop éclairée pour ne pas connoître, qu'il y a des Loix fixes et établies dans ce Gouvernement, dont on ne peut nullement s'écarter ; et que s'il arrivoit que la Marine *Angloise* s'avisât de faire la moindre Injustice aux Sujets Commerçans du Roy votre Maitre, il y a un Tribunal ici, savoir, la Haute Cour de l'Amirauté, à laquelle Ils se trouvent en droit de s'adresser, et de porter leurs Plaintes ; assurés d'avance, en pareil Cas, qu'on leur y rendra bonne Justice ; Les Procédés Juridiques de ladite Cour étant et ayant été de tout tems hors d'Atteinte, et irréprochables ; Temoin, Nombre d'Exemples, où des Vaisseaux Neutres, pris illicitement, ont été restitués avec Fraix et Dommages aux Propriétaires.

' Voici ce que le Roy m'a ordonné de vous repondre sur le Contenu de votre dit Memoire ; Et Sa Majesté ne sauroit que se flatter, qu'en Consequence de ce que Je viens d'avancer, il ne restera plus rien à desirer au Roy votre Maitre relativement à l'Objet dont il est question ; Et le Roy s'en croit d'autant plus assuré, qu'il est persuadé que sa Majesté *Prussienne* ne voudroit rien demander, qui ne fut [*sic*] équitable.

' Je Suis avec bien de la Consideration,

Monsieur,

Votre très humble, & très

Obeissant Serviteur,

CHESTERFIELD.'

Puts
Prussia
on the
footing of
neutral
Powers

There need no Observations. It is Explicit, and in Express Terms puts *Prussia* upon the Foot of other Neutral Powers with whom there was no Treaty ; and points out the proper Way of applying for Redress.

The verbal Declarations made by Lord *Carteret* in 1744, which are said to have been confirmed by this Letter from Lord *Chesterfield*, cannot have meant more than the Letter expresses. with whom there was no treaty.

And it is manifest, by the above Extract from Monsieur *Andrié's* Letter to his *Prussian* Majesty, that in May 1747,¹ Monsieur *Andrié* himself understood, that Goods of the Enemy, taken on Board Neutral Ships, ought to be condemned as Prize.

It is evident, from Authentick Acts, that the Subjects of *Prussia* never understood that any new Right was communicated to them.

Before the Year 1746, the *Prussians* don't appear to have openly engaged in Covering the Enemy's Property.

The Men of War and Privateers could not abstain from Captures, in Consequence of Lord *Carteret's* verbal Assurances in 1744; because they never were nor could be known: And there was no Occasion to notify them, supposing them only to promise impartial Justice. For all Ships of War were bound to act, and Courts of Admiralty to judge, according to the Law of Nations, and Treaties. Carteret's assurances of 1744 not notified to cruisers.

Till 1746, the *Prussian* Documents were, a Certificate of the Admiralty, upon the Oath of the Builder, that the Ship was *Prussian* built; and a Certificate of the Admiralty, upon the Oath of the Owner, that the Ship was *Prussian* Property.

From 1746, the *Prussians* engaged in the gainful Practice of Covering the Enemy's Goods; but were at a Loss in what Shape, and upon what Pretences, it might best be done.

On Board the Ship the 3 *Sœurs*, was found a Pass, bearing Date at *Stettin* the 6th of *October* 1746, under the Royal Seal of the *Prussia* Regency of *Pomerania*, &c. alledging the Cargo, which was Ship Timber, bound for Port *l'Orient*, to be *Prussian* Property, and, in Consequence thereof, claiming *Freedom of the Ship*.

¹ Misprint for 1744 in original.

Claiming Freedom to the Ship, from the Property of the Cargo, being quite new, the Proposition was afterwards reversed: And on Board a Ship, called the *Jumeaux*, was found a Pass, bearing Date at *Stettin* the 27th of *June* 1747, under the Royal Seal, &c. alledging the Ship to be *Prussian* Property, and, in Consequence thereof, claiming *Freedom to the Goods*.

But this Pass was not solely relied on, for there was also found on Board the same Ship, another Pass, bearing Date at *Stettin* the 14th of *June* 1747, under the Royal Seal, &c. alledging the Cargo to be *Prussian* Property.

And it is remarkable, that the Oaths, upon which these Passes were granted, appeared manifestly to be false: And neither of the Cargoes, to which they relate, are now so much as alledged to have been *Prussian* Property in said Lists A or B.

It being mentioned, in the said *Exposition des Motifs*, &c. that Mons. *Michell*, in *September* 1747, made verbal Representations to Lord *Chesterfield*, in Respect to the Cargo, taken on Board the said Ship called the 3 *Sœurs*, which was claimed as *Prussian* Property; and no Mention being made in Lists A and B of the said Cargo; we directed the Proceedings in that Cause to be laid before us, where it appears in the fullest and clearest Manner, from the Ship-Papers and Depositions, that the Cargo was Timber, laden on the Account, and at the Risque, of *French* Men, to whom it was to be delivered, at Port *l'Orient*, they paying *Freight* according to *Charter-Party*. That the *Prussian* Claimant was neither *Freighter*, *Lader*, or *Consignee*; and had no other Interest or Concern in the Matter, than to lend his Name and Conscience: For he swore, that the Cargo was his Property, and Laden on or before the 6th of *October*, 1746; and yet the Ship was then in *Ballast*, and the whole of the Cargo in Question was not Laden before *May* 1747.

Several other *Prussian* Claims had, in like Manner, come out so clearly to be merely colourable, that

Mons. *Andrié*, from his said Letter, 29 *May/9 June 1747*,¹ appears to have been ashamed of them.

Third Proposition.

That Lord Carteret, in his said two Conversations, specified, in your Majesty's Name, what Goods should be deemed Contraband.

That Carteret specified certain goods as contraband not relevant.

Answer. The Fact makes this Question totally immaterial, because no Goods condemned as Contraband, or which were alledged to be so, are so much as now suggested to have been *Prussian* Property in the said Lists A and B ; and, therefore, whether as Enemy's Property, or Contraband ; they were either Way rightly condemned ; and the Bills of Lading being false, the Ships could not be intitled to Freight.

But, if the Question was material, the verbal Declarations of a Minister in Conversation, might shew what he thought Contraband by the Law of Nations ; but never could be understood to be equivalent to a Treaty, derogating from that Law.

Verbal declaration of a Minister could merely show what he thought to be contraband.

All the Observations, upon the other Part of these verbal Declarations, hold equally as to this.

Fourth Proposition.

That the British Ministers have said that these Questions were decided according to the Laws of England.

British Ministers cannot have said that prize cases were decided by the laws of England.

Answer. They must have been misunderstood ; for the Law of *England* says, that all Captures at Sea, as Prize, in Time of War, must be judged of in a Court of Admiralty, according to the Law of Nations, and particular Treaties, where there are any.

There never existed a Case, where a Court, judging according to the Laws of *England* only, ever took Cognizance of Prize.

The Property of Prizes being given, during the last War, to the Captors ; your Majesty could not arbitrarily

¹ Misprint for 1744 in original.

Release the Capture, but left all Cases to the Decision of the proper Courts, judging by the Law of Nations and Treaties, where there were any: And it never was imagined, that the Property of a Foreign Subject, taken as Prize on the High Seas, could be affected by Laws peculiar to *England*.

Fifth Proposition.

Right of the Crown to set up prize-courts asserted. *That your Majesty could no more erect Tribunals for trying these Matters than the King of Prussia.*

Answer. Each Crown has, no doubt, an equal Right to erect Admiralty Courts, for the Tryal of Prizes taken by Virtue of their respective Commissions; but neither has a Right to try the Prizes taken by the other, or to reverse the Sentences given by the other's Tribunal. The only regular Method of rectifying their Errors, is, by Appeal to the superior Court.

This is the clear Law of Nations; and, by this Method, Prizes have always been determined, in every other Maritime Country of *Europe*, as well as *England*.

Sixth Proposition.

The freedom of the sea is not in question. *That the Sea is Free.*

Answer. They who maintain that Proposition in its utmost Extent, don't dispute but that when two Powers are at War, they may seize the Effects of each other upon the High Seas, and on Board the Ships of Friends: Therefore that Controversy is not in the least applicable upon the present Occasion.*

Seventh Proposition.

Spanish captures of British ships were made in time of peace. *Great Britain issued Reprizals against Spain, on Account of Captures at Sea.*

Answer. These Captures were not made in Time of War with any Power.

* This appears from *Grotius* in the Passages above cited, *Lib. 3. Cap. 1. Sect. 5. Nu. 4.* in his Notes. And *Lib. 3. Cap. 6. Sect. 6.* in his Notes.

They were not judged of by Courts of Admiralty, according to the Law of Nations and Treaties, but by Rules, which were themselves complained of, in Revenue Courts: The Damages were afterwards admitted, liquidated at a certain Sum, and agreed to be paid by a Convention, which was not performed. Therefore Reprizals issued; but they were general. No Debts due here to *Spaniards* were stopped; no *Spanish* Effects here were seized. Which leads to one Observation more.

The King of *Prussia* has engaged his Royal Word to pay the *Silesia* Debt to private Men.

It is negotiable, and many Parts may have been assigned to the Subjects of other Powers. It will not be easy to find an Instance, where a Prince has thought fit to make Reprizals, upon a Debt, due from himself to private Men. There is a Confidence that this will not be done; a private Man lends Money to a Prince, upon the Faith of an Engagement of Honour, because a Prince cannot be compelled, like other Men, in an adverse Way, by a Court of Justice. So scrupulously did *England*, *France* and *Spain* adhere to this Public Faith, that, even during the War, they suffered no Enquiry to be made, whether any Part of the Public Debts was due to Subjects of the Enemy, tho' it is certain, many *English* had Money in the *French* Funds, and many *French* had Money in ours.

Silesian bonds negotiable, and may have passed into the hands of subjects of other Powers.

This Loan to the late Emperor of *Germany*, *Charles* the VIth, in *January* 1734-5, was not a State Transaction, but a mere private Contract with the Lenders, who advanced their Money, upon the Emperor's obliging himself, his Heirs and Posterity, to repay the Principal with Interest, at the Rate, in the Manner, and at the Times in the Contract mentioned, *without any Delay, Demurr, Deduction, or Abatement whatsoever*; and, lest the Words and Instruments made use of should not be strong enough, he promises to secure the Performance of his Contract, *in and by such other Instruments, Method, Manner, Form, and Words, as should be most effectual and valid, to bind*

the said Emperor, his Heirs, Successors and Posterity, or as the Lenders should reasonably desire.

As a specific real Security, he mortgaged his Revenues, arising from the Dutchies of *Upper and Lower Silesia*, for Payment of Principal and Interest; and the whole Debt, Principal and Interest, was to be discharged in the Year 1745. If the Money could not be paid out of the Revenues of *Silesia*, the Emperor, his Heirs and Posterity, still remained Debtors, and were bound to pay. The Eviction or Destruction of a Thing mortgaged, don't extinguish the Debt, or discharge the Debtor.

Therefore the Empress-Queen, without the Consent of the Lenders, made it a Condition of her Yielding the Dutchies of *Silesia* to his *Prussian Majesty*, that he should stand in the place of the late Emperor, in Respect of this Debt.

Stipulations between the Queen of Hungary and King of Prussia for transfer of the obligation to pay.

The Seventh of the Preliminary Articles, between the Queen of *Hungary* and the King of *Prussia*, signed at *Breslau*, the 11th of *June*, 1742, is in these Words; 'Sa Majesté le Roi de *Prusse* se charge du seul Payement de la Somme hypothéquée sur la *Silesie*, aux Marchands *Anglois*, selon le Contract [sic] signé à Londres, le 7me de Janvier, 1734-5.'

This Stipulation is confirmed by the Ninth Article of the Treaty between their said Majesties, signed at *Berlin*, the 28th of *July*, 1742.

Also renewed and confirmed by the Second Article of the Treaty between their said Majesties, signed at *Dresden*, the 25th of *December*, 1745.

In Consideration of the Empress Queen's Cession, his *Prussian Majesty* has engaged to her, that he will pay this Money, selon le Contract [sic], and consequently has bound himself to stand in the Place of the late Emperor, in Respect of this Money, to all Intents and Purposes.

The late Emperor could not have seized this Money, as Reprizals, or even, in Case of open War between the two Nations, because his Faith was engaged to pay it, without

any *Delay, Demurr, Deduction, or Abatement whatsoever*. If these Words should not extend to all possible Cases, he had plighted his Honour to bind himself, by any other Form of Words, more effectually to pay the Money; and therefore was liable at any Time to be called upon, to declare expressly, that it should not be seized as Reprizals, or in Case of War; which is very commonly expressed, when Sovereign Princes, or States, borrow Money from Foreigners. Therefore, supposing for a Moment, that his *Prussian Majesty's* Complaint was founded in Justice, and the Law of Nations, and that he had a Right to make Reprizals in General, he could not, consistent with his Engagements to the Empress Queen, seize this Money as Reprizals. Besides, this whole Debt, *according to the Contract*, ought to have been discharged in 1745. It should, in Respect of the private Creditors, in Justice and Equity, be considered, as if the Contract had been performed; and the *Prussian* Complaints don't begin till 1746, after the whole Debt ought to have been paid.

Upon this Principle of natural Justice, *French* Ships and Effects, wrongfully taken, after the *Spanish* War, and before the *French* War, have, during the Heat of the War with *France*, and since, been restored by Sentence of your Majesty's Courts, to the *French* Owners. No such Ships or Effects ever were attempted to be confiscated, as Enemies Property here, during the War; because, had it not been for the Wrong first done, these Effects would not have been in your Majesty's Dominions. So, had not the Contract been first broke, by Non-payment of the whole Loan in 1745, this Money would not have been in his *Prussian* Majesty's Hands.

Your Majesty's Guaranty of these Treaties is entire, and must therefore depend upon the same Conditions, upon which the Cession was made by the Empress Queen.

But this Reasoning is, in some Measure, superfluous; because, if the making any Reprizals upon this Occasion, be unjustifiable, which we apprehend we have shewn,

then it is not disputed, but that the Non-payment of this Money would be a Breach of his *Prussian* Majesty's Engagements, and a Renunciation, on his Part, of those Treaties.

All which is most humbly submitted to your Majesty's Royal Wisdom.

GEO. LEE.
G. PAUL.
D. RYDER.
W. MURRAY.

January 18, 1753.

[This Report is reproduced from the quarto published by authority, London : Edward Owen, 1753. It has not been thought necessary to reprint the translation, which it contains, of Lord Chesterfield's letter of January 5, 1747/8, to Michell. But we add the Lists of Prussian and Neutral ships, corresponding with the Prussian Lists A and B, merely rearranging them for convenience of printing.]

LIST of all the *Prussian* Ships taken by *British* Armaments at Sea, during the last War, as well those detained for Examination only, as those judicially proceeded upon, together with the Judgments given in the Admiralty Courts of *Great Britain* thereupon, tallying with his *Prussian* Majesty's LIST marked A.

Ships, which (if taken) were restored by the Captors, upon Examination, without either Party applying to a Court of Justice.

1. La Frederique Amitie, Capitaine *Sprenger*.
4. La Catharine Christine, Capit. *Frederick Berend*.
16. Le St. Jean,* Capit. *Jean Grosse*.
17. Le Jeune Tobie, Capit. *Paul Otto*.

* On the 3d of February, the Duke of Newcastle received a letter from Mr. Wolters, His Majesty's Agent at Rotterdam, enclosing the following Declaration :

Ships and Goods restored, with all Costs and Damages attending the Capture.

3. L'Anne Elizabeth, Capit. *Daniel Schultz*, Costs and Damages, 280*l.* 12*s.* 1*d.*

DANS l'Exposition que Sa Majesté *Prussienne* a donnée au Public, des Vaisseaux de ses Sujets pris par les *Anglois* dans la dernière Guerre; J'ai remarqué dans la Liste A. N° 16, que le Navire le St. *Jean*, Capitaine *Jean Grosse*, y est notté comme ayant reçu quelques Dommages, au Prejudice des Propriétaires *Prussiens*. Comme le fait m'est connu, ayant été seul Propriétaire de sa Cargaison, Je veux en cette Qualité rendre Temoignage à la Verité, pour servir où il appartiendra. D'ailleurs, Je ne puis comprendre, comment les Sujets *Prussiens* osent demander un Dedommagement, qu'ils ont deja plus que reçu, comme Je vais les en convaincre.

Dans le Mois de *Novembre* 1747. Je fis fretter à *Bordeaux*, et charger à *Libourne* le dit Navire avec 158½ Tonneaux de Vin blanc. Le 1^{er} de *Dec.* suivant, ce Navire mit en Mer; Le 11. du dit Mois, Il se trouva à la hauteur des Dunes; Là il fut rencontré par le Corsaire *Anglois*, nommé le Prince d'*Orange*, qui envoya à bord du Navire *Prussien* six Hommes de son Equipage, et fit venir à son bord le Pilote *Prussien* avec les Papiers de mer, pour en faire l'Examen. Le 12. du dit Mois, étant à l'Ancre sous les Cingles, il s'eleva une furieuse Tempete de la Part du W. S. W. qui obligea le Capitaine *Prussien*, du Consentement de son Equipage, et des six *Anglois* pour lors dans son bord, de couper le Cable pour gagner la Mer. Ce Navire entra ensuite dans le Passage de *Browsershave* en *Hollande*, le 15^o du dit Mois de *Decembre*, sans avoir eu d'autre Dommage que la Perte d'une Partie de son Cable, et d'une Ancre, et arriva ensuite à *Rotterdam* le 21^o du susd^o Mois. Tout ceci est constaté par la Declaration du Capitaine et de son Equipage, passée, le 4 *Janvier* 1748, pardevant *Jacob Bremer*, Notaire Public dans *Rotterdam*; ensuite sermentée, le 6^o du dit Mois, pardevant les Commissaires de la Chambre de la Marine.

Après que le Navire fut dechargé, le Capitaine me fit fournir son Compte d'Avarie grosse, dans lequel il portoit les Articles suivants :

1. Pour la Perte de son Cable, et de son Ancre.
2. Pour la Nourriture de 8 Jours à 6 Hommes qui avoient été mis, par le Corsaire *Anglois*, sur son bord.
3. Pour un Passeport que Je lui fis donner à la *Haye* par l'Envoyé de *Prusse*, qui couta 3 à 4 Florins.

Je lui payai, pour ma Portion, dans cette Avarie grosse, 704 Florins, Argent courant d'*Hollande*, en outre 105 Florins dont Je fis Present au Cap^o. *Grosse*, et 10. 10^s. aussi de Present aux Matelots, qui composoient son Equipage. Outre tout ceci, Il m'en a couté 20 Florins ou environ, en *Angleterre*, pour autant que Mess^{rs}. *Simond Freres* avoient deboursé par mon Ordre pour le Pilote *Prussien* qui etoit resté à bord du Corsaire, lorsque la Tempete les separa.

Ceux qui se connoissent en Navigation, et en Armement de Navire,

Ships restored with Freight, according to the Bills of Lading, for such Goods, which were found to be the Property of the Enemy, and condemned as Prize.

11. L'Aigle D'Or, Capit. *Onne Arends*.

14. La Dorothee Sophie, Capit. *Piere Kettelhuth*.

15. La Deux Freres, Capit. *Aug. Augustinus*.

Ships and Goods restored, but without Costs, from Circumstances arising from the Case.

18. Le Petit David, Cap. *Michael Bugdahl*.

Ships and Cargoes restored, paying Costs. In these Cases, it either appeared, that the Ship had not the usual Evidence of Property, according to the Custom of the Sea ; or from the Ship-Papers, or Examination of the Crew, there appeared just Reason to presume the Cargo to belong to the Enemy, and the Neuter Claimant, declined proving his Property, by strict legal Evidence ; and obtained Restitution, on the Faith of his own Affidavit ; and, in these Cases, Courts of Admiralty have always made the like Decrees.

5. La Dame Juliene, Capit. *Martin Prest*.

6. Le Frederick II. Roy de Prusse, Capit. *Chretien Schultz*.

7. Le Vaisseau au bon Vent, Capit. *Michel Juriansen*.

ne pourront disconvenir, que les Proprietaires *Prussiens* se trouvent, au Moyen de 839. 10'. courans d'*Hollande*, que Je leur ai payés, plus que remboursés de toutes leurs Pretensions ; et s'ils peuvent, avec quelque Fondement, en demander d'autres.

Tout ce que J'avance ci dessus peut se verifier par des Pieces authentiques, (à la reserve des Presents, ou Gratifications, au Capitaine ou à son Equipage, Montant à 115. 10'. dont je n'ai pas retiré de Quittance,) en vertu dequoy J'ai signé la presente Declaration. *Rotterdam*, ce 30 Janvier 1753. *Pierre Trapaud le Jeune*.

The above Declaration was signed in my Presence ; and the original Vouchers, quoted in the same, have been produced to me. Witness my Hand and Seal.—*Rotterdam*, January the 30th, 1753.

R. Wolters. (L.S.)

9. La Daageroud, Capit. *Martin Sperwien*.
12. Les Deux Freres, Capit. *Jon Hallen*.

Cargoes, or part of them, condemned as contraband, and not now alledged, in List A or B, to have been *Prussian* Property, and therefore were certainly Prize of War.

2. Les Jumeaux, Capit. *Kruth*.
8. Le Soliel [*sic*] D'or, Capit. *Jacob Ridder*.
10. Le Frederick II. Roy de Prusse, Capit. *Chretien Schultz*.
13. Le Jeune André, Capit. *Henri Barckhorn*.

Appeals from the Admiralty Decrees.

18. Le Petit David, Capit. *Michael Bugdahl* [with result shown on p. 102].

LIST of all the Neutral Ships, taken by *British* Ships during the last War, in whose Cargoes the Subjects of *Prussia* Claim to have been interested; together with the Judgments given by his *Britannick* Majesty's Courts of Admiralty thereupon, tallying with his *Prussian* Majesty's LIST marked B.

If taken, released, by the Captors, on Examination, without either Party applying to a Court of Justice.

22. L'Anne Sophie, Capit. *Henri Horn de Wolgast*. Bourdeaux to Koningsberg. Released.
26. La Jeune Catherine, Commandeè par le Capit. *Kupper*, ensuite par le Capit. *Elker*. Bourdeaux to Hambourg. Released.

[Continued over page.]

No.	Ships Names.	In what Voyage taken.	Judgment, as to Ship.	Judgment, as to Goods.	For what Cause.
1	La Cecile, Capitaine <i>Bois Swensen</i> .	Cette to Altena	Restored	Restored	On Affidavits of the Property.
2	Le Nahring, Capit. <i>Chretien Tredeman</i> .	Rochelle to Bourdeaux	Restored	Restored	On Affidavits of the Property.
3	Le Demoiselle Jeane, Capit. <i>Joachim Peyn</i> .	Hambourg to Cadiz	Restored	Restored	On Affidavits of the Property.
4	Le Carishavener Weiffit, Capit. <i>Jean Holme</i> .	Hambourg to Cadiz	Restored	Restored	On Affidavits of Property.
5	L'Anne Elizabeth, Capit. <i>Chretien Mau</i> .	Hambourg to Cadiz	Restored	Part restored Part condemned	On Affidavits of Property. Want of Affidavits as to the Property.
6	Le Gustave Prince Royal, Capit. <i>Bavthow Muhl</i> .	Hambourg to Cadiz	Restored	Part restored Part condemned	On Affidavits of Property. Want of Affidavits of Property.
7	Le Jeune Benjamin, Capit. <i>Henri Newschilling</i> .	Hambourg to Cadiz	Restored	Part restored Part condemned	On Affidavits of Property. Want of Affidavits of Property.
8	Le Prince Frederick, Capit. <i>Jean Hartmann</i> .	Hambourg to Bilboa and Bayonne	Restored	Restored	On Affidavit of Property.
9	Le Marie Joseph, Capit. <i>Ferrier Rouge</i> .	Hambourg to Cadiz	Restored	Restored	On the Ship-Papers.
10	L'Union, Capit. <i>Jean Struckmann</i> .	Bourdeaux to Hambourg	Restored	Part restored Part condemned	On Affidavits of Property. Want of Affidavits of Property.
11	Le Neptune, Capit. <i>Sonder Heeren</i> .	Nants to Hambourg	Restored	Restored	On Affidavits of Property.
12	Le St. Paul,* Capit. <i>Gent Henschhren</i> .	Nants to Hambourg	Restored	Part restored The rest still de- pending	On Affidavits of Property. Want of Affidavits of Property.

* On the 29th of *January*, Affidavits were exhibited in the Court of Admiralty, and Sentence prayed on the Part of the *Prussian* Claimant, and the Goods were decreed to be restored.

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No.	Ships Names.	In what Voyage taken.	Judgment, as to Ship.	Judgment, as to Goods.	For what Cause.
13	La Couronne, Capit. <i>Pierre Classen</i> .	Nants to Hambourg	Restored	Restored	On Affidavits of Property.
14	La Demoiselle Catherine, Capit. <i>Wische de Vries</i> .	Rochelle to Altena	Restored	Part restored	On Affidavits of Property.
15	La Concorde, Capit. <i>Class Eschels</i> .	Rochelle to Hambourg	Restored	Part restored	Want of Affidavits of Property.
16	La Feaune, Capit. <i>Gerhard Roger Altag</i> .	Charente to Hambourg	Restored	Part restored	On Affidavits of Property.
17	L'Amitié, Capit. <i>Jean Quimann</i> .	Rochelle to Hambourg	Restored	Part condemned	Want of Affidavits of Property.
18	Le Jeune Prince Chrétien, Capit. <i>Jean Cornelle Lesuen</i> .	Marsailles to Hambourg	Restored	Part restored	On Affidavits of Property.
19	La Demi Marguerite, Capit. <i>Henri Eislenberg</i> .	Bourdeaux to Hambourg	Restored	Part restored	Want of Affidavits of Property.
20	Le Roxier, Capit. <i>Pierre Classen</i> .	Bourdeaux to Hambourg	Restored	Restored	On Affidavits of Property.
21	La Marie Sophie, Capit. <i>Christien Gregersen</i> .	Rochelle to Hambourg	Restored	Part restored	On Affidavits of Property.
23	Le Hop de Danzig, Capit. <i>Conrade Harlach</i> .	Bourdeaux to Dantzick	Restored	Part restored	Want of Affidavits of Property.
24	Le Jeune Jeane, de <i>Petersbourg</i> , Capit. <i>Thomas Siefers</i> .	Bourdeaux to Hambourg	Restored	Restored	On Affidavits of Property.
25	Le Gregoiret de Breme, Capit. <i>Jacob Muller</i> .	Bourdeaux to Hambourg	Restored	Part restored	On Affidavits of Property.
27	Les Six Seurs, de <i>Lubeck</i> , Capit. <i>Pierre Zaam</i> .	Bourdeaux to Lubeck	Restored	Part condemned	Want of Affidavits of Property.
28	La Ste. Anne, de <i>Hambourg</i> , Capit. <i>Abraham Peterson</i> .	Bourdeaux to Hambourg	Restored	Part restored	On Affidavits of Property.
				Part condemned	Want of Affidavits of Property.

No.	Ships Names.	In what Voyage taken.	Judgment, as to Ship.	Judgment, as to Goods.	For what Cause.
29	Le Jeune Eldert, <i>de Hambourg</i> , Capit. <i>Gaspel Atoen</i> .	Roan to Hambourg	Restored	Part restored	On Affidavits of Property.
30	Le Juste Henri, <i>de Hambourg</i> , Capit. <i>Henri Elkes</i> .	Bourdeaux to Ham- bourg	Restored	Part restored	Want of Affidavits of Property.
31	L'Elizabeth, Capit. <i>Soeren</i> <i>Petersen</i> .	Hambourg to Bour- deaux	Restored	Part condemned Restored	Want of Affidavits of Property. On Affidavits of Property.
32	La Demoiselle Claire, Capit. <i>Herman Classen Priest</i> .	Hambourg to Roan	Restored	Restored	On Affidavits of Property.
33	L'Adolph Frederic, Capit. <i>Jonas de Haspen</i> .	Marsailles to Ham- bourg	Restored	Restored	On Affidavits of Property.

CHAPTER X

SOME COMMENTS

IT will have been remarked that the *Exposition des Motifs* relies in the first place on a literal interpretation of Carteret's language to Andrié in 1744, as reported by the latter. In four of the propositions laid down it is expressly quoted. The preamble cites also a statement reported by Michell to have been made to him on September 11/22, 1747, by Chesterfield, to the effect that the British Government intended to abide by the declaration made by Carteret to Andrié at the outset of the war. It reproduces likewise a sentence from the note addressed to him by Chesterfield on January 5/16, 1747/8, stating that the maritime trade of Prussian subjects would not be interfered with so long as they carried it on in the permitted manner, and conformed to the old usages established and received among maritime nations. The declaration of Carteret was two-fold; first, on May 18, 1744, that the Prussian flag would be respected equally with that of the other Powers allied with England, with the sole exception of ships which carried munitions of war to her enemies, and second, May 29/June 9, that contraband did not include timber and other materials used in ship-building, or rope, sails, hemp, linseed, &c.; that the Prussian flag and subjects would be respected, and that the trade of the latter would not be interfered with, provided they abstained from conveying munitions of war (as defined in all the commercial treaties between the maritime Powers), nor any provisions to places besieged or blockaded by England.

In the second place the *Exposition des Motifs* denied

The Prussian case relies
1. On assurances given by English Secretaries of State.

2. On the assumption that capture of enemy property in neutral ships is contrary to the law of nations. that enemy property on board neutral ships could lawfully be confiscated, that such a proceeding was contrary to the Law of Nations and to all treaties ever concluded between the maritime Powers.

In the third place, it maintained that the English Government had no right to refer to an Admiralty Court established in England, the decision of disputes of the nature considered in the preceding questions (Nos. 1 to 4), which had arisen between two independent Powers, and to expect the injured Power, which demanded satisfaction, to abide by the decisions of that court.

3. That prize cases cannot be decided by prize-courts of the captor's country. Fourthly, it argued that the King of Prussia was justified in placing an embargo on the moneys of which payment was stipulated in the treaties of Breslau and Dresden, and in compensating his subjects out of these moneys.

The Report of the Law Officers replies to No. 1, that there were only four cases in which any goods on board a Prussian ship had been condemned, and that it was not pretended that compensation was asked for either of these cargoes. That the words alleged to have been used by Carteret¹ merely professed to treat the Prussians on the same footing with the subjects of other neutral Powers under the like circumstances, i. e. with whom there was no particular treaty. The reference to the other neutral Powers could not be understood to communicate the terms of any particular treaty. The treaties with Holland, Sweden, Russia, Portugal, Denmark, &c., all differed. The Report quotes Chesterfield's letter in full, and observes that it places Prussia on the footing of other neutral Powers with whom there was no treaty; that 'the verbal declarations made by Carteret in 1744, which are said to have been confirmed by this letter from Lord

4. That reprisals by the King of Prussia were justified. British reply:

1. Compensation is not asked for in any case of goods on board a Prussian ship having been condemned.

2. That Carteret's assurances did not place Prussia on the footing of a treaty Power.

¹ Carteret, who succeeded as Earl Granville on his mother's death, was one of the Committee of Privy Council which met at Newcastle House, February 6, 1753, to consider the papers; and as the language attributed to him in the *Exposition des Motifs* is not expressly disavowed, it may be taken that Andrié's report was admitted to be correct.

¹ Carteret, who succeeded as Earl Granville on his mother's death, was one of the Committee of Privy Council which met at Newcastle House, February 6, 1753, to consider the papers; and as the language attributed to him in the *Exposition des Motifs* is not expressly disavowed, it may be taken that Andrié's report was admitted to be correct.

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Chesterfield, cannot have meant more than the letter expresses'.¹

As to the second assertion that enemy property on board neutral ships was not liable to condemnation, the Report replies that the contrary is too clear to admit of being disputed, and quotes in a foot-note *Il Consolato del Mare* and other authorities on the point; 'but the general rule cannot be more strongly proved, than by the Exception which particular Treaties have made to it.' The Report also quotes Andrié's letter of May 29/June 9, 1744,² warning Frederick that his subjects ought not to load on board neutral ships any goods really belonging to the enemies of England.

3. Capture of enemy property in neutral ships is authorized by the law of nations.

As to the third Prussian position, that the English Government had no right to set up Courts of Admiralty to try the captures complained of, the Report maintains that before the ship or goods can be disposed of by the captor, there must be a regular judicial proceeding, wherein both parties may be heard, and that the proper and regular court for these proceedings is the court of the State to which the captor belongs; that if the sentence of the Court of Admiralty is thought to be erroneous, there is a superior court of review to which the parties who think themselves aggrieved may appeal. If no appeal is offered, it is an acknowledgement of the justice of the sentence by the parties themselves, and conclusive; by the Law of Nations the claimants ought not to complain to their own sovereign until injustice, *in re minime dubia*, was finally done to them, past redress; that each Crown has an equal right to erect Admiralty Courts for

4. Admiralty courts in the captor's country are alone competent to decide prize cases.

¹ Though it may fairly be inferred that Chesterfield's letter, or that portion of it which is quoted, was used to show that he confirmed Carteret's language, it does not seem that the *Exposition des Motifs* actually says that it is a confirmation.

² This copy of a letter must of course be equally accepted as authentic with Andrié's report of Carteret's language in 1744, and it shows that Andrié at least knew what in England was regarded as international law on this subject. From Legge's report of November 1/12, 1748 (p. 32), it appears also that Podewils admitted this principle.

the trial of prizes taken by virtue of their respective commissions, but neither has the right to try prizes taken by the other, or to reverse the sentences given by the other's tribunal.

5. No prince has ever made reprisals on a debt due from himself to private persons.

To the fourth position the Report answers that it will not be easy to find an instance where a prince has thought fit to make reprisals upon a debt due from himself to private men. A private man lends money to a prince upon the faith of an engagement of honour, because a prince cannot be compelled like other men, in an adverse way, by a court of justice. So scrupulously did England, France, and Spain adhere to this public faith, that even during the war, they suffered no inquiry to be made whether any part of the public debts was due to the subjects of the enemy, though it was certain that many English had money in the French funds, and many French in the English funds. Moreover, the Silesian debt was negotiable, and many parts might have been assigned to the subjects of other Powers. Prussian complaints did not begin till 1746, after the whole debt ought to have been discharged. Had not the contract been first broken by non-payment of the loan by the due date, the money would not have been in Frederick's hands.

The dispute might reasonably have been referred to arbitration.

No objection could be raised to claims being examined by Prussian authorities before presentation.

We conclude, upon the whole, that this was a case which might reasonably have been referred to arbitration, if the parties had agreed upon such a course. It will be seen later that a proposal to this effect was in fact made by King Frederick, but was declined by King George's ministers. The difficulty was to find an impartial arbitrator. It will also be admitted that if the King of Prussia had confined himself to appointing a commission to examine the complaints of his subjects, and to basing his demand for redress upon the report of such a commission, no objection could have been raised. The modern doctrine generally received is that before a claim can be presented diplomatically to the Government of a Foreign State, the claimant must first have exhausted all the

remedies available to him by the laws of that State. Sir Roundell Palmer in a weighty speech delivered in the House of Commons on March 7, 1862, said : ' The parties aggrieved are bound to go before the Court of Appeal, before they can invoke the interference of their own government, if the first decision is contrary to what they think right. However, if in the court of ultimate appeal some flagrant and indisputable wrong has been done—some principle of the Law of Nations disregarded—undoubtedly the country aggrieved is not bound by that decision, but has a right to demand restitution and compensation for the individuals ill-treated by the decision of the Prize Court. That is the ordinary Law of Nations.'

Duty of claimant to exhaust all legal remedies before invoking diplomatic intervention.

CHAPTER XI

PRIZE LAW IN THE FIRST HALF OF THE EIGHTEENTH CENTURY

IN the course of the Prussian *Exposition des Motifs, &c.*, frequent reference is made to 'le droit de la nature et des gens', to 'le droit naturel', to 'la raison naturelle', or to 'la raison et le droit des gens'. That the 'law of nature' and 'natural law' are too vague and uncertain to be regarded as a source of international law, has been sufficiently demonstrated by Robert Ward. It was, however, very usual at that period for writers to refer it to the law of nature, as a collection of moral precepts understood and recognized by all men, and therefore by all nations. That law is in reality based on the customs observed among themselves by the Christian nations of Europe, both in war and peace. When other independent Christian nations established themselves in North and South America, they followed the rules recognized by the mother-countries. In more recent times certain non-Christian peoples have voluntarily adopted and practised the law, and have contributed to its codification and amendment.

From the time of Grotius onwards, text-writers of reputation came to be frequently quoted by Governments in vindication of their actions. When so quoted, these writers may be regarded as authorities on what the Governments concerned held to be the Law of Nations. In their legislation respecting Maritime Law in time of war, Governments must likewise be supposed to have merely enacted for the guidance of their prize-courts what they held to be in accordance with that particular branch of International Law. Certain treaties which had been concluded between some of them, were evidently

regarded as simply providing exceptional treatment as between the contracting parties.

What was the legislation of the principal maritime Powers about the middle of the eighteenth century will be seen from the summaries here offered.

FRENCH MARITIME LAW OF WAR

It is clear from the following citations that during the war of 1744-8 the French law confiscated enemy goods in neutral ships, and even neutral goods in enemy ships; and that up to October 21, 1744, the rule *robe d'ennemi confisque robe d'ami* prevailed. Also that produce or manufacture of the enemy country was treated like enemy property, no matter to whom it belonged. This rule doubtless originated in the assumption that merchant vessels carried solely the produce and manufacture of their own country, and did not act as general carriers.

*Règlement of October 21, 1744.*¹

Art. I. Neutral vessels sailing from the ports of their sovereign, loaded on account of subjects of the said neutral sovereign with goods the produce or manufacture of their own country, even when bound for an enemy port, except contraband of war, are free.

Neutrals may trade to enemy ports from their own country with goods from thence. Neutral vessels may carry goods from an enemy country to a port of their own country. Produce or manufacture of

Art. II. Neutral vessels sailing from any port, even of an enemy, loaded on account of the subjects of neutral sovereigns, with goods taken in the country from which they started and bound direct for a port of their own sovereign, are free.

Art. III. Neutral vessels leaving a neutral or allied port, provided they are not laden with goods the produce or manufacture of enemies, are free; in the contrary case the goods are good prize, but the vessels are to be released.

Art. IV. Neutral vessels, quitting an allied or neutral

¹ Valin, ii. 250.

an enemy country.
 Contra-
 band,
 enemy
 produce
 or manu-
 facture
 going to
 an enemy
 port.
 Enemy
 property.
 Papers
 thrown
 into the
 sea.

port, and bound for an enemy port, provided they carry no contraband, or goods the produce or manufacture of an enemy country, are free ; if such goods are on board they are good prize, but the vessels are to be released.

Art. V. If the neutral vessels mentioned in the preceding articles have on board goods belonging to the enemy, even though not of the manufacture of the enemy country, the goods are good prize, but the vessels are to be released.

Art. VI. In case of papers thrown into the sea, whether the vessel be enemy, neutral or allied, even if enough remain on board to prove that the vessel belongs to friends or allies, such vessels are to be declared good prize.

Contra-
 vention
 of sea-
 letters.

Art. VII.¹ No regard shall be had to sea-letters granted by neutral sovereigns if those who have obtained them have acted in contravention thereof, and the vessels shall be declared good prize.

Invali-
 dity of
 sea-
 letters.

Art. VIII. A sea-letter can only be used for one voyage, and will be regarded as null and void if it is proved that when it was granted the vessel was not in a port of the sovereign who issued it.

Unsigned
 bills of
 lading.

Art. IX. Bills of lading (*connaissements*) found on board, but not signed, shall be null and void.

Proofs of
 sale to
 neutral
 required.

Art. X. Vessels built in an enemy country or which had belonged to an enemy must have on board authentic documents signed before public officials (*officiers publics*) establishing the date of sale to a neutral or ally, showing that the sale was effected before the declaration of war, and the transfer duly registered before the principal official of the place from which it sailed, and effected by the owner or his legal attorney. If the vessel built in an enemy country is a prize taken from the enemy it must have official certificates of the original capture and of the sale or adjudication to the subjects of an allied or neutral State, either in France or in the port

¹ This and the following three articles are derived from a *réglement* of February 17, 1694. Valin, ii. 246.

of an ally. In default of such documents the vessel will be good prize, and no subsequent production of documents shall be allowed to the owners of the vessels or of the goods loaded thereon.

Art. XI. No regard will be had to sea-letters granted by neutral or allied sovereigns to the owners or masters of vessels, being subjects of an enemy State, unless they have been naturalized in the States of the said sovereigns before the declaration of war, and no owners or masters being subjects of an enemy State, if after the said letters of naturalization have been obtained they have returned to the enemy State to there continue their trade, will be able to avail themselves thereof.

Sea-letters granted to subjects of an enemy state by a neutral or allied sovereign.

Art. XII. All foreign vessels having a supercargo, merchant, clerk or mate (*officier marinier*) of an enemy State, or of which the crew is composed, as to more than $\frac{2}{3}$, of sailors of the enemy country, or which has no ship's articles (*rôle d'équipage*) on board drawn up by the public officials of the place from which the vessel has sailed, shall be good prize.

Supercargo, &c., or crew exceeding $\frac{2}{3}$ of enemy subjects, renders ship good prize.

Art. XIII. Exception made in case where the captain or master proves by documents on board that he has been obliged to engage mates or sailors in the ports at which he has touched to replace those of the neutral State deceased during the voyage.

Exception where the crew has been engaged at an intermediate port.

Art. XIV. Danish and Dutch ships may freely navigate from their ports to other ports neutral or enemy, from a neutral port to an enemy port, or from one enemy port to another, provided that it is not to a blockaded place, and provided that in the last two cases they are not laden wholly or in part with goods reputed contraband by the treaties, and that notwithstanding the tenor of the first four Articles of this Regulation, of which Arts. 6, 7, 8, 9, 10, 11, and 12 shall nevertheless be executed against them; and in case they should be laden wholly or in part with such contraband goods, going to an enemy port whether from another enemy port or from

Privileges conceded to Danish and Dutch vessels [by treaty].

a neutral port, the goods shall be good prize, without the vessels and the rest of their cargo nor their private effects being detained, even when they belong to enemies.

Re-
stricted
privi-
leges of
Swedish
and Han-
seatic
ships,
which
may not
carry
enemy
goods.
Vessels
carrying
goods
laden in
France
are free.
Penalties
on priva-
teers for
violating
these regu-
lations.

Art. XV. The same shall be observed with regard to Swedish and Hanseatic ships, in which, however, all goods without distinction belonging to enemies, even when not contraband, shall be good prize, without the ships and the rest of the cargo nor their personal effects being retained.

Art. XVI. All vessels leaving the ports of France which shall have no other goods on board than those laden thereat, to go free.

Art. XVII. In case of violation of any of the preceding articles by a French privateer, replevin shall be made to the subjects of neutral sovereigns of their vessels and the cargo on board which may not be liable to confiscation, and the privateers are to be condemned to damages and costs.

Règlement of 1704.

Before October 21, 1744, the French law was the *Règlement of July 23, 1704.*¹

Art. I. Neutral vessels free to trade from their own ports, and laden on account of the owners or of their countrymen with goods the produce or manufacture of their own country, to any other country, even that of an enemy, provided they carry no contraband.

Art. II. Same as II of 1744.

Art. III. Same as III of 1744.

Art. IV. Same as IV of 1744.

Art. V. Nevertheless if in the cases enumerated in the first four articles neutral vessels have any enemy property on board, the vessels and all the cargo shall be good prize in accordance with Art. 7 of the chapter on Prize in the Ordinance of August 1681.

Robe
d'ennemi
confisque
robe
d'ami.

¹ Valin, ii, p. 248.

Art. VI.¹ Neutral vessels sailing from an enemy port and having thereat taken all or part of their cargo, and bound for the States of any other Sovereign than their own, whether he be an ally, neutral or enemy, may be stopped and carried into France and shall be declared good prize with their cargoes, even though laden on account of French subjects, or of subjects of an ally or neutral.

Art. VII is the same in intent as the first part of Art. X of 1744.

Art. VIII. Similar to XI of 1744.

Art. IX. Same as XII of 1744.

Art. X. Same as XIII of 1744.

Art. XI. Delay of four months before the preceding four articles come into force.

Art. XII. Same as XVI of 1744.

Art. XIII. Same as XVII of 1744.

Enemy-built ships sold after declaration of war.

Ordonnance de la Marine of August 1681.

Art. IV. Enemy ships are good prize.²

Art. VI. Absence of charter-party, bills of lading³ or invoices entails confiscation of the vessel, no matter whether it belongs to an enemy, neutral or ally.

Art. VII.⁴ All vessels, whether belonging to French subjects, or to the subjects of neutrals or allies, laden with enemy goods, and goods of French subjects or allies found on board an enemy ship are good prize.

Enemy goods wherever found are good prize, together with the ship.

[Art. V of 1744, says Valin, seems to provide that only the enemy goods shall be confiscated, and the neutral ship be released, but that was only in respect of certain treaties concluded with neutrals or allies, and the principle remains intact.]

Art. XI. Arms, powder, shot, and other munitions of war, even horses and vehicles (*équipages*) transported for the use of the enemy, are to be confiscated, no matter

Contraband.

¹ Still in force in 1744 : see Valin, p. 267, § 2.

² *Ibid.*, ii. 237.

³ *Ibid.*, p. 243.

⁴ *Ibid.*, p. 252.

in what ship found, and no matter who is the owner, a French subject or the subject of an ally.

Art. XII. Any vessel which shall refuse to take in her sails, after the warning (*semonce*) which shall have been given by one of our ships or privateers, may be constrained thereto by artillery or otherwise, and in case of resistance or combat, shall be good prize. [The commentary, p. 270, says the warning may be given by the voice or by a blank shot. The *coup de semonce ou d'assurance* (affirming gun) must be fired under the national flag. The author alleges that in the last two wars the English did fire it under a false flag; hence it is now argued that this means of surprising a ship is allowable, provided the national flag is hoisted for the combat. But he regards this practice as cowardly and perfidious, which cannot be justified by the enemy's example.]

Applica-
tion of
the
twenty-
four
hours'
rule.

Art. XIV.¹ Prizes taken by privateers bearing a foreign commission may not remain in port more than twenty-four hours, unless kept in by stress of weather, or unless the prize has been taken from our enemies. [This rule dates from 1650 (p. 219). The author adds in his commentary that except for stress of weather, the vessel being fit to go to sea, she must be compelled to leave at the expiration of twenty-four hours, no matter what the danger of capture by her enemy; otherwise the duty of a neutral is violated. That is only in regard to prizes brought into a neutral port, and does not concern friendly or neutral vessels which have taken refuge unaccompanied by prizes, in order to escape from an enemy or for any other cause. In that case they may remain as long as it is thought fit to allow them, and it is not necessary to make them put to sea after twenty-four hours. The law of nature and of nations authorize giving asylum to any vessel compelled to put in by stress of weather. But the law of war allows the seizure and confiscation

¹ Valin, ii, p. 272.

of an enemy which has put in to escape shipwreck, otherwise he might come in to spy under that pretext. Asylum is therefore not due to the enemy; to him the only obligation is that of saving life.]

Art. XV.¹ Goods belonging to a French subject or to the subject of an ally, which are on board a prize brought into a French port to be restored. The rest of the cargo may not be stored or sold under any pretext.

Disposal of goods on board a prize brought into a French port.

MARITIME LAW, AS ADMINISTERED BY THE ENGLISH ADMIRALTY COURTS

The High Court of Admiralty held on various occasions that the Crown could make a declaration what shall be contraband.² 'Sovereigns have a right to declare what shall be deemed contraband, and have always done so.' 'Sovereign Princes at war may declare such and such things to be contraband, and after notice to their allies, their subjects may certainly seize them.'

March 22, 1747/8.

June 29, 1750.

Certain rules and directions were appointed on February 22, 1664,³ to be observed by the High Court of Admiralty in the adjudication of prizes, Great Britain being then at war with Holland. Art. 2 orders that where neutral ships shall be found having persons or goods on board belonging to the enemy, the ship and the goods shall be condemned as good and lawful prize. Art. 4: 'That where any neutral ship shall fight or make resistance, or the master or any of the company shall throw, burn, tear or conceal any of the ship's papers or documents, or shall have no papers at all found on board in the said ship, or shall bring and offer to the Court any false writings for evidence, thereby to clear her and her goods, or any of them, the said ship and goods shall be judged and condemned as good and lawful prize.' Art. 5: 'That if any ship or vessell shall be met withall carrying arms, powder, ammunition, or

¹ Valin, ii, p. 273. ² Pratt, pp. 40, 61, 108, 198. ³ Ibid., p. 249.

provisions of victuals or any contraband goods to the enemy, such ships and goods shall be judged and condemned as good and lawful prize.'

May 18, 1665, it was ordered by 'his Majestyes Principal Commissioners of Prizes' that 'Canvas, masts, pitch, tar, and all other navall accommodations, as also wine, oyl, brandy, fish, corn, salt, flesh, and all other things that tend as provisions unto the support of life, as well as powder, guns, or other instruments of war [be] declared contraband goods, and so intended by his Majestyes declaration of the 22nd February 1664'.

June 3, 1672,¹ in the Rules and Directions appointed by his Majesty in Council to be observed by the High Court of Admiralty in the Adjudication of Prizes, Art. 1 makes the goods found on board enemy ships subject to condemnation as good and lawful prize = unfree ships. The articles relating to the destruction of papers, or false papers, and to carriage of contraband goods, were the same as in the rules of 1664.

The instructions to privateers of May 2, 1693,² show that ships belonging to any Prince or State in war with France, or belonging to 'Altena', Glückstadt, Hamburgh, Lubeck, Dantzick and other cities and places in the Empire, although belonging to the King of Sweden, Denmark, or other Princes or States, as members of the Empire, which shall be bound to, or coming from, France, might be taken as prize. All ships of any other nation that are bound to France, from any place in war with France, or shall come from France bound to any such place, might be taken as prize, unless only in ballast. The Empire and England were then allied in war against France.

Again, the Instructions to privateers of January 29, 1704/5 were that goods belonging to inhabitants in France would be liable to confiscation and seizure [*sic*]. The War of the Spanish Succession was then going on.

¹ Pratt, p. 252.

² *Ibid.*, p. 264.

In 1711, in virtue of the Act 3 & 4 Anne, cap. 13, and in answer to questions put by the King of Prussia's Resident, the following goods were stated to be contraband :¹

All sorts of arms offensive or defensive, ordnance, ordnance stores, powder, match, bullets, pitch, tar, hemp, masts, cordage, iron, saltpetre, horses, saddles, holsters, and other utensils and habiliments of war.

The masters, pilots and mariners of Prussian ships trading into France [with which country Great Britain was then at war] must be subjects of the King of Prussia or of some other foreign prince or State in amity with Queen Anne.

That no Prussian ship should sail from one port of France to another, but in ballast only, unless the entire lading of such ship could not be sold in one port, in which case such ship might be permitted to carry the rest of her cargo, *so as no part thereof be French goods*, to some other port of that kingdom to be there sold : Prussian ships to carry no goods to France but such as were the property of Prussian subjects, or that belonged to subjects of Her Majesty, and of the growth, produce or manufacture of some of Her Majesty's dominions. The goods enumerated in this document as contraband were those specified in the convention of 1691 between England, Denmark, and Holland.

It will be observed that besides defining contraband, i.e. what is now termed absolute contraband, this statement affirms that a neutral vessel may not be employed in the coasting trade of an enemy, and limits the goods which may be carried in a neutral vessel to any enemy port, to the property of subjects of the neutral State, or the property of British subjects being the growth, produce, or manufacture of any of the British dominions.

The Instructions of June 18, 1744,² enumerate as

¹ *S. P. For., Treaty Papers*, vol. 60, Lords of the Treasury to Mr. Secretary St. John.

² Pratt, p. 257.

contraband 'all sorts of fire-works and things thereto belonging, as cannon, muskets, mortars . . . horses, saddles, holsters, belts, sailwork, rigging, cables, cordage, masts, lead, pitch, tar, hemp, together with all other equipage that serves for sea and land, laden in Danish or Swedish ships, or ships belonging to neutral countries, and bound to the enemies' country'. They enjoin the strict observance of the Treaty with Holland of 1674, and all other treaties between England and her allies; and not to do or attempt anything against British subjects, or the subjects of any Prince or State in amity with England, 'nor against their ships, vessels or goods; but only against France and Spain, their vassals and subjects, and others inhabiting within their countries, territories, or dominions, their ships, vessels, and goods, except as before excepted [i.e. carrying contraband]; and against such other ships, vessels, and goods as are or shall be liable to confiscation.'

In addition to the articles named above, certain classes of goods, which Grotius¹ defines as 'quae et in bello et extra bellum usum habent, ut pecuniae, commeatus, naves et quae navibus adsunt', and especially provisions, were treated as contraband if going to an enemy port of naval equipment.

Lastly, England had adopted and applied the rule of the *Consolato del Mare* that enemy goods were confiscable when carried on board a neutral ship, while neutral property on board an enemy ship was free.

Molloy, third edition, 1682, p. 14: 'So on the other hand, if the ships of *Friends* shall be freighted out to carry the Goods of *Enemies*, this may subject them to *prize*, especially if the Goods shall be laden aboard *by the consent or privity of the Master or Skipper*.' From this it is a necessary inference that he held the goods to be confiscable.

All these rules with regard to contraband, enemy

¹ Bk. III, Cap. v, § 2.

property and coasting trade of an enemy were subject to exceptions contained in commercial treaties; but it was held that the exceptions were not of general application and could be claimed solely by the neutral who was a party to such treaty or treaties. Where no treaty existed, the general rule applied.

Generally speaking, it may be said that during the first half of the eighteenth century, Great Britain continued to adhere to and enforce the rules which the leading writers on International Law, such as Heineccius, Casaregi, Bynkershoek, and Vattel, had expounded and illustrated.¹ Heineccius includes grain, salt, wine, oil, ropes, sails, and other naval stores among contraband of war.² He says, 'Si res hostiles in navibus amicorum reperiantur, illas capi posse, nemo dubitat; quia hosti in res hostiles omnia licent, eatenus ut eas ubicunque repertas sibi possit vindicare.'³ Bynkershoek is quoted as stating that, 'Vessels and goods belonging to the enemy, when taken on the high seas, become the absolute property of the captor, without reference to the lapse of time, by actual and full occupancy, such as the captor is able to defend and maintain, namely, when the vessel and cargo shall have been brought into a port of his own country, or among a fleet of men-of-war belonging to his government.'⁴ He is clearly of opinion that enemy goods in a neutral ship are confiscable.⁵ As to contraband, he says: 'The things which cannot be lawfully carried to the enemies of our friends, and which are called contraband of war, are those which, in their present state, may be fit for, or of service in, war; and it makes no difference whether they are of use in peace or not.'⁶ Thus he rejects the distinction made by Grotius between absolute and conditional contraband. The goods of a friend found in an enemy ship are not liable to

¹ Reddie, *Researches in Maritime International Law*, 1844, p. 263.

² *Ibid.*, p. 210.

³ *Ibid.*, p. 212.

⁴ *Ibid.*, p. 216.

⁵ *Ibid.*, p. 223.

⁶ *Ibid.*, p. 218.

confiscation. Casaregi lays it down that: 'Merces inimicorum, de jure, legitime deprædantur, quamvis in navi amicâ deportentur. Et sic, in praxi, et consuetudine servatur.'¹ Vattel includes amongst contraband of war, 'wood, and whatever is of use for the construction and armament of ships of war, horses, and even victuals or provisions, on certain occasions, where there is a prospect of reducing the enemy by famine.'² He also lays it down that, 'If there be found on board a neutral vessel effects belonging to the enemy, they are seized by the law of war; but naturally, the freight ought to be paid to the master of the vessel who cannot suffer by that seizure.'³

Reddie quotes as 'a lucid exposition of the principal doctrines of Maritime international law, as then observed,' the passage in the Report of the Law Officers, beginning 'First, as to the Law', and ending 'in whose Courts the Matter is try'd'.⁴

SPANISH LAW

The authority on this subject appears to be *Tratado sobre las Marítimas Presas*, by d'Abreu, published at Cadiz in 1746, of which a French translation was published in 1802. By Spanish law the merchandise of neutrals or allies found on board enemy ships is lawful prize. Respecting enemy goods on board the vessels of friends or allies, he says: 'Le droit commun paroît décider contre la saisie de ces marchandises, parceque pour les trouver et les reconnoître, il faut aborder le navire, le traiter avec violence, et en user avec un ami comme avec un ennemi. Malgré cela, cependant, le droit des nations et celui de la guerre fournissent toutes sortes de raisons pour autoriser la capture de ces effets, quand il y a prouvé [*sic*] qu'ils appartiennent à des

¹ Reddie, *Researches in Maritime International Law*, p. 226, quoted from *Discursus Legales de Commercio*.

² *Ibid.*, p. 237.

³ *Ibid.*, p. 240.

⁴ *Supra*, pp. 78-83.

ennemis. Ils ont, pour ainsi dire, un vice réel et inhérent, qui les suit partout, et qui subsiste indépendamment du lieu, ou du vaisseau, qui les contient. . . . Ainsi les marchandises appartenant aux ennemis portent, pour ainsi dire, un caractère indélébile, qui les rend de bonne prise, sur quelque bord qu'on les trouve.'¹ He also quotes the authority of the Spanish *Ordonnance des Courses* of 1718, that: 'Seront de bonne prise les navires qui porteront des marchandises appartenant aux ennemis, de même que les effets des Espagnols trouvés à bord de vaisseaux ennemis.' But he adds: 'Malgré le poids de ces raisons, nous croyons que les traités cités ci dessus, faits avec la France et la Hollande sont plus conformes au droit commun, et par conséquent les vaisseaux des amis ou alliés n'encourent point la confiscation pour porter les effets des ennemis.'²

DUTCH MARITIME LAW IN TIME OF WAR

Contraband.

According to the most recent ordinances in force during the first half of the eighteenth century, namely those of 1709—besides weapons offensive and defensive and parts thereof, powder, match, saltpetre, bullets, &c., which are provided for in earlier ordinances—masts, spars, yards, all kinds of wood in the rough, ships' timber, oaken planks, hemp, rope, sailcloth, pitch, tar, sulphur, cast-iron and steel, iron bars, large and small nails, copper, lead, tin manufactured and unmanufactured, tallow, flax, oakum, iron-wood, tin-plates, Muscovy glass and horn (January 21, 1690), horses (February 13, 1701), hay, oats and horsebeans (February 26, 1701), the following are declared contraband: grains, to wit wheat, rye, barley, buckwheat, oats, spelt and all other, destined to France, Spain and other enemy places, no matter whence they come, starch, groats, beans, pease, rice and millet.

¹ Reddie, *op. cit.*, p. 251.

² *Ibid.*, p. 256.

This was during the War of the Spanish Succession, when Holland was allied with Great Britain. The Republic did not become a belligerent between 1713, the date of the treaty of Utrecht, and April 1747, when France declared war against it. Practically, however, a state of war had existed since 1743, when Dutch troops took the field as auxiliaries of Maria Theresa, and still more in 1744, when France invaded Flanders and expelled the Dutch garrisons from the barrier towns. At the same time it must be remembered that English troops fought against the French at Dettingen in 1743, without a legal state of war existing between Great Britain and France.¹

The ordinances of 1689 and 1690 had made provisions (*vivres*) contraband, as well as all materials for the equipment of ships.² This was at variance with existing treaties and conventions between Sweden and Holland, but not to the same extent with those between Denmark and Holland.³ Article III of the preliminary treaty (*pacta praevia*) of 1667 between Sweden and Holland contains the usual list of warlike appliances which are always treated as contraband, and by Art. IV money,

¹ The natural resources of Holland being mainly agricultural, the Republic depended, for the financial means of carrying on war, upon her commerce with foreign countries. Consequently, during the war of the Grand Alliance against Louis XIV from 1689 to 1697, William III had procured leave for her to continue to trade with France. Again, when the War of the Spanish Succession broke out, although England had broken off commercial intercourse with the enemy, an example which was followed by the Emperor and the allied princes of Germany, Holland was unwilling to abandon her profitable trading and financial relations with France. It was with difficulty that she was persuaded in 1702 to give them up for the space of one year, and in 1703 England resigned herself to the impossibility of obtaining an extension to the end of the war (C. van Noorden, *Der spanische Erbfolgekrieg*, i. 300, 306, 307 n.). Great Britain, however, in 1711, when peace was in sight, passed an Act permitting French wines to be imported in exchange for the export of English goods in neutral ships (*S. P. For., Treaty Papers*, vol. 60, Treasury to Secretary St. John, April 20).

² See the Resolution of the States-General of January 4, 1692.

³ Rijksarchief at The Hague, *Recueil van Placaaten*, ii. 218.

corn, beans, and pease, salt, wines, oil and all other articles of food, as well as iron, copper, brass, and materials of every kind used in the construction or equipment of ships, are expressly excluded from the list of contraband ; excepting, however, money, provisions, and soldiers, or any other thing likely to be useful or helpful to the enemy, which are being conveyed to fortified places or garrison towns on the coast which are being besieged or blockaded with the intention of capturing them. But by a separate Article it is provided that as Holland is at war with the King of England, articles utilizable in the construction of men-of-war, destined for importation into places under the jurisdiction of Britain may be intercepted and confiscated.¹

Treaties containing similar lists of contraband, and of goods which can never be so regarded, were concluded between the same parties in 1675 and 1679.²

The treaties and conventions with Denmark consist, first of a convention signed at Copenhagen June 20/30 1691,³ and, second, of a provisional treaty⁴ of the same date, followed in December 1691 by 'Articles d'Amplification et Explication', and by an 'Edictum seu Declaratorium', to which is attached a 'Specification des Marchandises deffenduës'. The convention, after providing for payment by Holland of 85,000 rix-dollars by way of compensation for certain Danish ships with their cargoes, which had been captured by Dutch privateers, lays it down that certain regulations respecting trade with France made, or hereafter to be made, shall be faithfully observed, and that other matters shall be disposed of in accordance with the universal laws and customs observed at sea. Art. III of the provisional treaty provides that enemy goods laden on board a Danish

Treaty
with
Den-
mark.

¹ Dumont, *Corps Diplomatique*, vol. vii, pars 1, p. 37.

² *Ibid.*, pp. 316, 437.

³ Manuscript at the Hague Rijksarchief.

⁴ Dumont, *op. cit.*, vol. vii, pars 2, pp. 292-6.

ship may not be transported from one French port to another, but must be conveyed direct to a Danish port. The 'Articles d'Amplification', &c., add that Danish ships, if unable to sell their whole cargo in one French port, may carry what remains to another port to sell it there.¹ Trade between the ports of the German empire and France is prohibited by these articles to Danish ships. The 'Specification of prohibited merchandize' includes besides munitions of war as ordinarily understood, horses and saddles, sails, ropes, masts, lead, pitch, tar, hemp, 'together with whatsoever serves for equipment by sea or by land, without including any other merchandize of whatsoever nature'.

Bynkershoek, whose *Quaestionum juris publici Libri Duo* was published at Leyden in 1737, may be regarded as a good authority on Dutch maritime law of the period under consideration. In Book I, cap. x, citing the ordinance of April 14, 1672, he says: '*tanquam hostis van den Staat punitur, si quis ad hostem vehat eenige munitie van Oorlog, vivres, of eenige materialen, dienende tot uytrusting van Schepen, of eenige andere verbode waren* (i. e. any munitions of war, provisions, or any materials serving for the equipment of ships, or any other forbidden articles). *Idemque juris est in peregrino, qui ea ex his Regionibus ad hostes advehit.*' His definition of contraband is not quite clear. He says, 'articles which, in their actual condition, can be made use of in war ("quae, uti sunt, bello apta esse possunt"), and it matters not if they are also used in time of peace, as swords or gunpowder. All the existing treaties show that those articles are called contraband which serve for carrying on war, whether weapons of war or materials suitable for war in themselves ("quae . . . bellis gerendis inser-

¹ This provision appears to relate to outward cargoes from Denmark, not to goods belonging to French owners, which is the meaning attached by the 'Articles d'Amplification' to the expression 'enemy goods'. The object of the stipulation was to exclude Danish ships from the French coasting trade.

viunt, sive instrumenta bellica sint, sive materia per se bello apta").' He goes on to say: But if every material be prohibited from which something may be fitted for war, the list of prohibited articles would be enormous, since there is scarcely any material from which we cannot manufacture something, at least, fit for use in war (' Si omnem materiam prohibeas, ex qua quid bello aptari possit, ingens esset catalogus rerum prohibitarum, quia nulla fere materia est, ex qua non saltem aliquid, bello aptum, facile fabricemus'). Quoting the Anglo-Dutch treaty of 1674, he says, neutrals are allowed to furnish the enemy with iron, copper, metals (*metallum*), shipbuilding materials and all things which are not prepared for use in war. It sometimes happens, however, that shipbuilding materials are prohibited, if the enemy has great need of them, and cannot conveniently carry on war without them; and these are exceptions which confirm the rule. In making this qualification he evidently had in mind the 'separate article' of the Swedish Treaty of 1667, which was directed against England.¹

Enemy Goods in Neutral Ships

The other question, one of the greatest interest to the Dutch, is whether enemy goods can be captured in neutral ships. The States-General had negotiated during many years with both France and England before they obtained the desired concession in favour of their carrying trade.² Bynkershoek discusses it in cap. xiv. In his opinion the treaties which concede *vry schip, vry goed* are to be regarded as exceptions to the rule ('haec Pacta exceptionum loco esse habenda'). 'In any case we are more concerned with the reason of the thing than with

¹ See also the citation from this author in the section on English Maritime Law in Time of War, p. 123.

² See *Lettres et negotiations entre M. Jean de Witt, etc., 1725, tom. 1, and Thurloe, State Papers, iii-vii.*

treaties. And, consulting reason, I do not see why it should not be lawful to take enemy goods, although found in the ship of a friend. If you say that I cannot rightly seize enemy goods in a friend's ship, unless I first seize the friend's ship, and so use force against a friend's property, in order to take the enemy's property, and that that is no more allowable than to attack our enemies in a friend's port, or to seize booty in the territory of a friend, I would have you observe, that it is allowable to stop the ship of a friend, in order that it may be proved to be a friend's ship, not by a deceptive flag (*fallaci aplustri*),¹ but by the papers themselves. If it is shown to be a friend, I shall release it; if it is proved to be an enemy, I shall take possession. If it be allowed, as it is allowed by all law, and is always observed, it will be permissible to examine also the papers regarding the cargo, and to learn thence whether any enemy goods are concealed on board, and if any are concealed, why should I not take possession of them by the law of war?'²

Bynkershoek refers to a decision given by the Dutch Government in 1665, on the question whether 'unfree goods' make 'unfree ship', i.e. whether a neutral ship carrying either contraband or enemy's goods was liable to confiscation—to the effect that by the Dutch law the ship is not liable to confiscation.³ The decision quotes Grotius on this point, and a sentence attributed to Ayala: 'bona hostium solummodo in praedam veniunt, non naves.' It seems safe to infer that Holland confiscated enemy goods in a neutral ship, where the neutral ship did not enjoy the right by treaty of conveying enemy goods, but did not recognize the validity of the French principle that 'robe d'ennemi confisque robe d'ami'; except of course where there was a treaty

¹ *aplustre*, strictly the curved stern-ornament of a ship (Smith, *Dict. of Antiq.*).

² This passage is quoted in Ward, *A Treatise, &c.*, p. 67; Manning, *Law of Nations*, p. 290.

³ Isaac van den Berg, *Nederlands Advys-Boek*, iv. 622.

providing that enemy goods should go free in a neutral ship and the converse, as for instance the treaty with Spain ('darbij voegende dat het tractaat van Marine met Spangie gemaakt, uitdrukkelijk mede brengt, dat onvrij schip maakt onvrij goed, ende geen onvrij goed onvrij schip').

In January 1692 it came to the knowledge of the States-General that Dutch privateers had captured and brought in neutral vessels, contrary to existing treaties, and they issued stringent orders to the Courts of Admiralty to put a stop to such proceedings, expressly mentioning their treaties with Sweden and Denmark. These have already been referred to as defining contraband. The first of these treaties also stipulates that all cargo in an enemy ship should be liable to confiscation, no matter whether the owner of the cargo were an enemy or a neutral, and that enemy goods might be freely carried in each other's ships, except contraband of war. Or more shortly the parties adopted the same rule as the Spanish treaty just mentioned, namely, enemy ships, enemy goods—free ships, free goods except contraband of war.

No ordinances of later date than those here quoted have come to our knowledge.

CHAPTER XII

CAUSES OF ILL-FEELING BETWEEN GEORGE II AND FREDERICK THE GREAT. RESULT OF NEGOTIATIONS WITH SPAIN, AUSTRIA, AND RUSSIA FOLLOWING ON PRESENTATION OF THE PAPERS IN THE PRUSSIAN- ENGLISH CONTROVERSY

Various
causes of
ill-feeling
between
the two
sove-
reigns.

FROM a very early period of Frederick's reign there had not lacked subjects of disagreement and latent hostility between him and his uncle George II. Indeed their relations seemed to be coloured by the feelings of mutual dislike and even contempt which had prevailed between his father and the King of England. In 1740 George II was 57 years old, Frederick only 28, but the difference of age had no more moderating influence than had their relationship. There was the old grievance of the suppression of George I's will, by which it was supposed that a large legacy had been left to Frederick's mother.¹ Then there were the rival claims of the Elector of Hanover and the King of Prussia to the Ost-Friesland succession, which Frederick settled in his own favour by taking possession of that province on the death of the last Prince in May 1744. After an exchange of controversial papers put forward on either side, George II, in October 1746, initiated proceedings before the Aulic Council, which, however, led to nothing, as the King of Prussia refused to enter an appearance.² Another ground of strife was the occupation of certain bailiwicks in Mecklenburg by Hanover, in contravention, it was held, of Frederick's eventual claim to that Duchy. George's policy of upholding the Pragmatic Sanction and affording support to Maria-Theresa in the Silesian question was

¹ *Pol. Cor.* i. 37, 38, 50, 54, 411. Also Hon. Evan Charteris's letter in *The Times* of January 21, 1909.

² *Preuss. Staatss.* ii. 384.

perhaps the gravest cause of dissension between them. George's meddlesomeness in urging a proposal that the Archduke Joseph should be elected King of the Romans, in 1750, which Frederick opposed by every possible means, increased the tension.¹ In December 1748 Legge had complained of the favour shown by Frederick to the two Keiths, both of them declared Jacobites who had been 'out' in 1715.² Frederick's choice in 1751 of Earl Marischal, one of these brothers, to be his ambassador in Paris, was vehemently resented by George II. Frederick's sarcasms respecting King George's behaviour at the battle of Dettingen had no doubt come to his knowledge, and the unfriendly rejoicings over the defeat of the English at Fontenoy were a new source of provocation. Thus the rejection of the judgements pronounced in Prussian prize cases by the English Admiralty Courts, and the assumption of a right to have the cases tried over again by a Prussian Court established for that purpose, were easily regarded by George II as a fresh insult, which he was determined not to tolerate.

On February 6 it had been resolved by the Committee of the Privy Council³ that printed copies of the reply to Michell and of the report of the Law Officers should be sent to the King's diplomatic representatives at foreign Courts for communication to the respective governments. Special instructions were to be addressed to the Ambassadors at Paris and Madrid, and to the Ministers at Vienna, St. Petersburg, and the Hague.

Copies of papers sent to British representatives at foreign Courts.

The correspondence with Benjamin Keene, Ambassador at Madrid, is of no great importance, except as showing that the Spanish Government took a sympathetic view of the English case, and was inclined to ridicule French notions of International Law.

To Spain.

¹ *Pol. Cor.*, vols. vii and viii *passim*. ² *Ibid.* vi. 322. ³ App. 36.

AUSTRIA

To
Austria.

On February 13, 1753, Newcastle, as Secretary of State for the Northern Department, addressed instructions to Robert Keith,¹ the British minister at Vienna, the first portion of which was also sent as a circular to all the diplomatic representatives. He was then directed to point out to the Austrian ministry how essentially the Empress-Queen was concerned in the question, as the Silesian loan had been contracted by her father, the late Emperor Charles VI, and the engagement to repay it was given by the King of Prussia to Her Imperial Majesty. Consequently the Empress-Queen was so closely connected with the King of England in this affair, that he did not doubt she would take such measures as should be agreed upon between them, to induce the King of Prussia to recede from his resolution; and particularly, in case he should persist, notwithstanding the proofs now given of the injustice and irregularity of his proceedings, that then it might not be improper for the Court of Vienna to give the King of Prussia to understand that they looked upon his discharge of the debt as an essential obligation of the treaties of Breslau and Dresden.

King
George
contem-
plating
reprisals.

There seems very little reason to doubt that George II and his ministers contemplated a resort to reprisals of some sort, in case Frederick refused to give way, and that there was some idea of seizing Prussian merchant ships, and in particular those which were engaged in trade from Emden to the East. There is frequent allusion in the correspondence of this period to steps which the King of England might resolve on taking to resent the insult he had received, measures such as it might become necessary for him to adopt in vindication of the rights of his subjects, and the danger which might result to the public tranquillity if Frederick persisted in his unjust proceedings.² And it seems to have been expected that

¹ App. 38.

² Albemarle to Holderness, February 21, 1753.

Frederick would retort either by the seizure of Lauenburg or an attack on some other part of the King's German dominions. In that event King George would expect assistance from his allies, and in particular from the Empress-Queen. The English Government, it appears,¹ also considered it possible that the King of Prussia might, without further provocation, be encouraged to follow up his threat of applying the instalment still remaining unpaid to the compensation of losses suffered by his subjects, by some attack on King George's German dominions, and this belief was founded on rumours of orders having been given to form camps at different points of the Prussian frontiers, to buy artillery horses and to collect large quantities of forage²—rumours afterwards proved to have been without foundation.³

Apprehensions of attack on the king's German dominions.

Keith reported on March 1⁴ the receipt of this dispatch, and proceeded on the 9th⁵ to give an account of the manner in which he had carried out his instructions. He had spoken to the Empress-Queen in verbal conformity with Newcastle's dispatch. In reply, she had expressed her approval of the English reply, and the moderation and wisdom with which King George had acted. Should the King of Prussia, contrary to all expectation, proceed to attack His Majesty's German dominions, the King might depend on 'their' fulfilling all their engagements with the utmost exactness. As to the suggestion that she should make representations to the King of Prussia, she had not any opportunity of doing that, as he had never mentioned the matter to the Austrian minister at Berlin, nor by his own minister at Vienna, probably because he felt that the Empress and Emperor were 'too much the King's friends to approve of such proceedings'. She also talked rather vaguely about the necessity of

Reply from Maria-Theresa.

¹ Newcastle to Colonel Yorke, February 13, 1753.

² See Holderness to Albemarle of March 14, 1753.

³ See Frederick's denial in letter of March 1 to Langschmid, *Pol. Cor.* ix. 358, and March 31 to Michell, *ibid.*, p. 382.

⁴ App. 39.

⁵ App. 40.

concerting new measures for the common safety. Keith rejoined that this might be gone into as soon as the important affair of the election of a King of the Romans was carried into execution.

A dispatch from Newcastle¹ of the same day gives an account of the alarming rumours about hostile plans attributed to Frederick, informs Keith of the instructions sent to St. Petersburg, which he was to communicate to the Austrian ministers with a view to their instructing General Pretlack, the Austrian representative, to support Guy Dickens in the representations he was to make to the Russian Court. He was to submit to the Emperor the desirability of so disposing the Austrian troops as, in case of an attack on Hanover from Prussia, would enable a considerable diversion to be made by them immediately. He should endeavour to learn what further measures should, in the opinion of the Emperor and Empress, be taken for the preservation of peace and the frustration of ambitious projects on the part of France and Prussia.

Difficulties with Austria arising out of the Barrier Treaty of 1715.

Ever since the conclusion of peace at Aix-la-Chapelle a somewhat acrimonious dispute had been going on between the English, Dutch, and Austrian governments with regard to the fulfilment of the Barrier Treaty of 1715, which had fallen into abeyance in consequence of the conquest of Flanders by the French.² That province was, however, restored to Austria at the peace. In a dispatch to Keith of March 30, 1753,³ after commenting upon the unsatisfactory nature of the reply returned by the French Court to the request for *bons offices* with Frederick, Newcastle says that the assurances given by the Emperor and Empress that the King might depend

¹ App. 41.

² See Groen van Prinsterer, *Archives de la Maison d'Orange-Nassau*, 4^{me} série, tom. i, ii; and Gachard, *Histoire de la Belgique au commencement du 18^{me} siècle*. The abstract of this treaty given in the *Cambridge Modern History* (v. 459) is in several respects inaccurate.

³ App. 42.

on their fulfilling their engagements to him had given great satisfaction.¹ He then refers to Maria-Theresa's suggestion that existing engagements might be extended, so as to put the allied Courts in a position to defend themselves, if attacked, and observes that if her plan should be King George's accession to the secret article of the treaty of 1746 between Austria and Russia,² he is to explain the impossibility of acceding to that proposal, as it would involve a departure from the guarantee he had given to Frederick of his possession of Silesia. And he adds that 'No Plan or Scheme for those great Purposes, can be effectual till the Disputes about the Barrier are settled, to mutual Satisfaction; without which the Republick of Holland will be (I fear,) irretrievably lost to the Alliance'. Keith was instructed to seek an audience of their Majesties, and convey to them the remarks contained in this dispatch. In another long dispatch of April 20 about the Barrier, Newcastle writes: 'Is it possible then, to imagine that we can continue Our Union with the Empress-Queen by a sacrifice of our Commercial Interests, and That in the Case of the Low Countries; which, at the Expence of so much Blood, and Treasure, have been conquered by the Maritime Powers for the House of Austria.' Keith, in his reply of May 25,³ reported what he had said to the Empress-Queen on these two points, but apparently without bringing conviction to her mind. Interesting also is a dispatch of Newcastle's of October 22⁴ to Keith on a proposal of Mirepoix's that the King of France should purchase the Prussian claims for between £15,000 and £20,000, which England should afterwards repay; to compound in this manner would have dangerous consequences, and it had been rejected. An important dispatch from Holderness to Keith of April 26, 1754, winds up by saying 'how absolutely impossible it will be for H. M. to induce the States-General to enter into the several Measures, which

French proposal that the King of France should purchase the Prussian claims.

Holland insists on execution of the Barrier Treaty.

¹ See above, p. 135. ² See below, p. 139. ³ App. 43. ⁴ App. 44.

it may be necessary to take for the good of the Common Cause, either now or hereafter, if this principal object of their Interest be neglected [i. e. the Barrier], or abandoned; and you cannot but know, that if the States General (which I hope will never be the case) should quit their present system, it will be impracticable for the King to carry on the Measures, He is known to pursue, and in which, The Court of Vienna is so nearly interested.'

Increasing tension between Austria and the Maritime Powers induces the former to turn towards France.

Five months later, in sending a new counter-project for the settlement of this question, as the *ultimatum* of the Maritime Powers, to be presented without the accompaniment of a written *pro-memoriâ*, Holdernessee said: 'The whole Conduct of the Court of Vienna, through the Course of this Transaction, having been so indecent and offensive, That it would be impossible to avoid some Expressions, in a written Paper, that might give the Court of Vienna a Handle to protract a negotiation, wch. His Majesty is desirous to bring to a Conclusion.' This new draft was rejected by the Austrian Ministry in November, and the feeling on both sides was that the alliance of the Maritime Powers with Austria had received its *coup de grâce*. The language of Holdernessee is a sufficient indication of what was thought in England. Maria-Theresa's sentiments can be gathered from her letter of June 26, 1751, to the Prince of Orange, repeated by Kaunitz in a letter of June 6, 1754, to the British and Dutch representatives at Vienna.¹ Gachard's conclusion that the refusal of the English and Dutch to accept the Empress's proposals was a leading factor in her determination to turn to France for an alliance is certainly confirmed by the story of the Barrier negotiations.²

RUSSIA

Convention with Russia for

In 1747 conventions had been concluded with Russia in June by England alone, for the use of 30,000 Russian troops whenever requisitioned by the King of England,

¹ Groen van Prinsterer, op. cit., ii. 146.

² Gachard, pp. 410, 535.

in November by England and Holland for the same number of troops to be employed on the Moselle or in Flanders as might seem preferable to the two Maritime Powers, and again in December with England alone, of similar tenor, to which a secret article was attached, providing that these troops should never be used against any one but the King of Prussia.¹ In 1746 a treaty of alliance had been concluded between the Empress Elizabeth and Maria-Theresa,² to which various secret articles were annexed, of which the fourth recognized the right of the Queen-Empress to recover the portion of Silesia and the county of Glatz ceded to the King of Prussia by the peace of Dresden, in case either of the contracting parties or the Republic of Poland were attacked by the King of Prussia. The main object of the alliance was to put limits to the ambition of Frederick the Great, and in October 1750 George II declared his accession to the main treaty, but not to the secret articles, as that which referred to Silesia was in conflict with the guarantee of his possessions given to Frederick. The Empress on this occasion declared that Russia would defend Hanover in case it was attacked in consequence of the King's accession to the Russo-Austrian alliance. These facts encouraged him in 1753 to make proposals for a new subsidy treaty for the assistance of Russian troops in case his German possessions were attacked by Frederick. The instructions sent to Colonel Guy Dickens for this purpose on February 13 were in conformity with the circular addressed to the other British diplomatic representatives, merely enclosing the four documents forming the Prussian case and the British counter-case. This was followed on March 9 by detailed instructions,³ enclosing a copy of the dispatch to Keith of February 13, in which it was stated that application had been made to the Court of France, with

military assistance in 1747.

Treaty of Warsaw.

English proposals for a new treaty for military assistance.

¹ de Martens, tom. ix (x), pp. 144, 147, 165; the secret article at p. 171.

² de Martens, i. 147.

³ App. 45.

reasonable hope of a good result. Still it was impossible to depend upon the King of Prussia's listening to reason. The preparations which the King had heard were being made along the frontiers of his German dominions led to the apprehension that an attack was in contemplation. Colonel Dickens was therefore to lay the state of the case before the Empress Elizabeth, the Grand Chancellor, and other ministers, and say that if any such further violence were committed by the King of Prussia, the King would become entitled to claim the assistance of his allies, and in particular that secured by the defensive alliances of 1741 and 1742 with Russia, and by his accession to the Austro-Russian treaty of 1746. He desired, however, that the assistance in question should be as little burdensome as possible to Her Imperial Majesty, and he was willing to depart from what he was in strictness entitled to. If Colonel Dickens could procure a written assurance that upon notice of an attack by Prussia, the Empress of Russia would assist him with 30,000 or 40,000 men, now quartered in Livonia, and also furnish a large body of Cossacks and Kalmucks to invade the Prussian dominions, he would from the date of the march of such Regular or Irregular Troops give a proportionable subsidy to be paid as long as they should continue in the service of Great Britain ; and if the troubles should be soon and happily ended, part of the subsidy might be continued for such time as should be agreed upon ; but that circumstances did not permit him to grant any considerable subsidy unless there should appear to be an absolute necessity for it. The great point was to agree upon the number of troops and the sum to be paid for them. There was then a reference to the agreement of 1747, and it was observed that on the present occasion the King was entitled to the succours stipulated, without any money payment, and the troops were not to march until the subsidy became payable. These considerations ought greatly to lessen the expense. No sum could be named,

as that would depend upon the number of troops to be furnished. Colonel Dickens was therefore to use his utmost to cut down the sum demanded. When the terms and conditions proposed by the Empress were agreed to by the King, he would be assured of the assistance of the Russian troops, in case he were attacked, and the Empress would be assured that the stipulated succours should not be required until the King had complied with the proposals to be transmitted, in consequence of these instructions, for the King's approbation. The dispatch wound up by saying that if the Russian Court neglected this opportunity, and insisted on a previous provisional subsidy—which could not be granted—if the King of Prussia should once resolve to break the peace, the Russians would have to defend themselves 'upon their own bottom' without any assistance of men or money, and the Turks would be ready to take advantage of such a situation, while the Empress-Queen would have more than sufficient occupation in providing for her own security. Newcastle adds that he was sending this dispatch under flying seal to Keith, that he might discuss its tenor with the Austrian ministers, and a copy of the dispatch of the same date to Keith was enclosed for Dickens's information.

A 'very secret' letter of the same date¹ authorizes Colonel Dickens to advance £2,500 to the Grand Chancellor if he succeeded in procuring the Empress's consent to the proposed plan, and a further amount of £2,500 if the Chancellor gave the desired written assurance. He might further promise a similar sum as soon as the Russian troops began their march in consequence of a requisition from King George, with a further gratuity in case Bestuchew assisted him in fixing the subsidy at as moderate a figure as possible; the lower the subsidy the greater the consideration for it would be. It was pointed out that this offer of money showed 'how much

Offer of
bribes to
Bestu-
chew.

¹ App. 46.

the King has the success of this affair at heart'. It is hoped that Colonel Dickens will endeavour to reduce the subsidy as low as possible, and Newcastle adds: 'We shall be very impatient to know the success of this important negotiation.' What wonder if the minister supposed that he was completely authorized to enter into an agreement *ad referendum*, with a certainty of the agreement being approved!

Bribery of ministers at foreign courts was an expedient frequently resorted to in the eighteenth century. Frederick the Great probably practised it less often than other sovereigns, from want of money rather than want of will. He did not scruple to bribe secretaries in foreign chanceries to furnish him with copies of important confidential correspondence. There is a report from his minister at Dresden of this year,¹ in which Bestuchew is represented as saying that Saxony had made considerable offers to him in 1745, which he had refused, at the moment that Prussia and France *lui en avaient fait de plus avantageuses*.

Dilatori-
ness of
the
Russian
Govern-
ment.

In Colonel Dickens's dispatches from time to time, accounts are given of the delays he met with, chiefly owing to the Empress Elizabeth's indolence and unwillingness to occupy herself with business matters. At last, on July 1/12,² he was able to report that the Russian demands were very high. Six days later he sent a full report of his negotiations, with enclosures. Amongst these were copy of a memorandum he had handed in, embodying his instructions, and the Russian *pro-memoriâ* in reply. It offers no observations on the merits of the controversy between Prussia and England, but plunges at once into the question of auxiliary troops, and proposes the draft of a convention. These papers, dispatched by way of Vienna, did not reach London till about August 20. By that time the apprehensions of a Prussian attack seemed to have entirely subsided. Accordingly his report

¹ *Pol. Cor.* ix. 414.

² *App.* 47.

elicited from Newcastle a severe rebuke¹ for the manner in which he had carried out his instructions and for having misled the English Government by statements in his previous correspondence, to the effect that 'The Court of Russia would come into His Majesty's plan, and, in such a manner, as would be entirely agreeable to Him'. He was told that he had completely misunderstood his instructions, and that the King was extremely offended at his having taken on himself, without orders, to present a memorial in writing. His reply of October 14/25² explained that there were only two ways of transacting business with the Russian Court, viz. either by presenting a *pro-memoriâ*, or by a conference with the Grand Chancellor and Vice-Chancellor, at which everything said was taken down *ad Protocollum*. In spite of the King's dissatisfaction, so strongly expressed, Dickens was left at his post and allowed to continue the negotiation, until he himself applied in February 1755 to be relieved of his appointment on the ground of age and infirmities, and 'Intemperancy of the climate'. He was succeeded by Sir Charles Hanbury Williams in June of that year. Before leaving he wrote³ that the real reason of the delays was that 'They are desirous here, to see, before They take any Resolution, if the Disputes between England and France, about the Affairs of America, will not come to a Rupture, that this Court may sell Their Assistance the dearer to his Majesty; Knowing these people here, as I do, I am not at all surprized at their Proceedings, and I have suspected Them, for some time, but did not care to mention my Suspicion, to your Lordship, without some foundation; notwithstanding these prevarications, I must tell Your Lordship, that I am much less in pain, about the Success of Measures pursuing here, than I am about the Dependance, which may be had on Them, when they are brought to Perfection, for sooner,

Hanbury Williams sent to conclude the negotiation.

¹ App. 48.

² Record Office, *S. P. For., Russia*, vol. 57.

³ Record Office, April 11/22, 1755.

or later, they will accept his Majesty's Offers, rather than bear the whole Expence, of the Great Body of Troops, which they cannot avoid keeping on Their Frontiers, but should the Case exist, that these Troops must move forwards, hereafter, I am afraid We shall find numberless Difficulties, and Obstacles, if They are to act by Themselves ; Therefore I hope to be pardoned, if from my Zeal for the publick Good, I repeat, what I said some Months ago, of the Necessity of not running the hazard of Disappointments from this Court, were even all their most unreasonable Demands complied with. . . .'

There is an excellent account of the further course of the negotiations, which were terminated by the signature on September 19 of a convention, in F. de Martens's *Traité et Conventions*, ix (x), p. 194, Article V stipulating that an invasion of the German dominions of His Britannique Majesty on account of interests or disputes which concerned his kingdoms should be regarded as a *casus foederis* of 1742. It is framed in general terms, but the Empress of Russia regarded it, as she was justified in doing, as applying only to the case of an aggression by Prussia, and on February 1 she caused a secret declaration to be delivered to Williams making this point perfectly clear.¹ The treaty of Westminster of January 16, 1756, consequently rendered this convention a dead letter.

Failure of
the Con-
vention.

A confirmation of the Russian view is afforded by a letter of Newcastle to the Duke of Devonshire, dated January 2, 1756 :² ' I am sure, Your Grace will be glad to hear that all the good consequences which we proposed from the Russian Treaty have already in a great measure happened. We immediately made a communication of the whole to the King of Prussia, which was so well received (as your Grace will see by the enclosed copy of the note taken by my Lord Holderness, which I send

¹ de Martens, p. 201.

² British Museum Add. MS. 32862, f. 6 v.

you in the greatest confidence and to be communicated to *Nobody*) That we have actually sent in concert with the Prussian Minister here the Draught of a Convention to Berlin for the junction with the King of Prussia, in case the French Troops should invade Germany, which we have great Reason to hope will be accepted, and which if accepted is undoubtedly greatly owing to our treaty with Russia, so that not only Hanover and the Empire will be secure, but a new connection between us and Prussia made which may have good consequences in other respects.'

CHAPTER XIII

NEGOTIATIONS WITH HOLLAND

THE narrative contained in the last chapter has interest only as an episode in the diplomatic history of the period, and we now turn to discussions which derive their importance from questions affecting the interpretation of treaties and the respective rights of belligerents and neutrals in maritime war.

The relations between Great Britain and Holland during a great part of the eighteenth century were very intimate, both governments being interested in the maintenance of the Barrier Treaty, which formed a subject of dispute with the Court of Vienna. Apart from this, the correspondence with Holland deserves attention for two reasons, and first, that Frederick had a similar controversy with the Dutch respecting the treatment of Prussian ships by privateers.¹ Memorials were presented by Ammon, the Prussian minister at the Hague, in August and December 1747, complaining of annoyance experienced by Prussian subjects and ships from the visits and seizure of goods by Dutch seamen. After examination of the complaint by delegates of naval affairs and in consultation with delegates of the Admiralty Courts, the States passed a resolution on March 5, 1748, by which it was determined that 'passes granted or to be hereafter granted by the King of Prussia to the ships of his subjects should be respected by the Admiralty Courts, war-vessels, and privateers, if such ships had not laden other than permitted goods and no contraband, and that the ships of Prussian subjects shall not be molested further than is necessary for the visit in order to ascertain the nature of the cargo, and as sanc-

¹ *Pol. Cor.* vi. 22, 36, 83, 88.

tioned by the laws and customs of the sea'.¹ Frederick seems to have regarded this as a frivolous reply to his representations, and instructed Mardefeld on April 21 to inform the Dutch envoy at Berlin that if satisfaction were not given, the proximity of Prussia to Holland would enable him to take it. Mardefeld reported the result, with which Frederick appears to have been contented, for there is no further allusion to the matter in the *Politische Correspondenz*. In 1753 (March 3) Hellen reported from the Hague that in Holland much satisfaction was felt with Frederick's energetic action against England, as Dutch merchants had also suffered during the earlier part of the war in the same way as the Prussians. For although the French had committed acts of hostility against Holland as early as June 1744, which were repeated in 1745 and 1746, by expelling the Dutch garrisons from the Barrier towns, the States-General declined to consider themselves at war with France, but preferred to maintain the position of a neutral power, until the French declaration of war was delivered to them on April 17, 1747. Consequently they attempted to rely, up to that date, on the article of their treaty of 1674, which provided that *as between the English and Dutch reciprocally*, the principles of 'free ships, free goods', and 'enemy ships, enemy goods' should be observed. This view was contested by the British Government, which held that the Dutch were not properly neutral, as they were bound by their alliance to come to the aid of Great Britain whenever the latter was at war with France.

Equivo-
cal atti-
tude of
Holland
from 1744
to 1747.

There was an exchange of dispatches in January 1753 between Newcastle and Yorke² respecting orders rumoured to have been given by the King of Prussia for quarters to be prepared at Embden for 10,000 men, and regarding the language Yorke was to hold about his claim to detain the last instalment of the Silesian debt. The instructions

Instruc-
tions to
Yorke.

¹ Letter from the Superintendent of the Algemeen Rijksarchief at the Hague, *apud me*.

² App. 49 and 50.

Apprehensions of a Prussian attack on George II's German dominions.

to Yorke of February 13 were similar to those sent to Keith,¹ enclosing printed copies of the reply to Michell, the Report of the Law Officers, together with Michell's printed Memorial and the *Exposition des Motifs*, all of which were to be delivered to the Princess Royal² and the Dutch ministers, if they had not already received copies of the latter two. In a private letter of the same date³ Newcastle alluded to the apprehension felt that Frederick might take it into his head to support his present action by an attack either on the King's German dominions or on Holland. It was asserted that a camp for 50,000 men had been marked out near Spandau. Should Frederick proceed to hostile action against Hanover, King George was confident that he might count upon the immediate assistance of the Republic. At the same time Yorke was to assure the princess and her ministers that everything would be done by George to avoid such a contingency consistently with the duty he owed to his subjects and with the honour and dignity of his crown. Mirepoix, the French Ambassador, had expressed himself in the most friendly manner, but there were grounds for doubting whether his government would act so fairly as he appeared to hope. All rival nations would be glad to see the English fleet and trade embarrassed, and the lesser Powers would not be sorry to have a precedent for carrying on trade in time of war in the unjustifiable manner insisted on by the King of Prussia. If that was submitted to by England, she would be precluded from ever engaging in a foreign war.

Yorke's reply of February 20.

Yorke replied on February 20⁴ that the papers had been delivered to the Dutch ministers and had given universal satisfaction. Every one who had read them

¹ App. 38. Down to the words 'Violence, and Absurdity of Those at Berlin'.

² Eldest daughter of George II, widow of the Stadtholder William IV. He died October 23, 1751, and she became Regent, her son being only three years of age.

³ App. 51.

⁴ App. 52.

was fully convinced of the justice of the proceedings in England, and of the violence and absurdity of those taken at Berlin. He was having the Report translated into Dutch for publication. The Prussian ministers had printed the *Exposition des Motifs* in all languages and dispersed it in all countries.

Newcastle, in writing to Yorke on March 6,¹ admitted that if France made serious representations to Frederick regarding his proceedings, there was little reason to fear *voyes de fait* on his part, but it was always prudent to be prepared for the worst, when you had to deal with a prince who was governed by the principles which appeared to have influenced the King of Prussia in this affair. In reply to the objections made by the Pensionary of Holland, as reported in Yorke's private letter of February 20,² Newcastle urged, first, that England had no treaty with Prussia [relative to the carriage of enemy goods in Prussian ships], so that the general Law of Nations was the only rule that could be followed; second, that by Article 20 of the Treaty of Aix-la-Chapelle the King's German dominions were expressly guaranteed by all the contracting parties, among which Holland was included.

Later on, Newcastle sent him under flying seal his dispatch of March 30³ to Keith, in order that he might acquaint the Princess Royal with the answer received from France on the Prussian affair; writing on April 17,⁴ he still appeared to think it possible that Frederick would take some violent step.

Yorke reported on May 8⁵ that he had been informed by the Grand Pensionary of the demand made by France that Holland should insist upon the restitution of all goods, the property of French subjects, taken under the Dutch flag and condemned during the late war. As the Grand Pensionary seemed to imagine that England had made some new declaration to the French Court on this

France requests Holland to insist on restitution of French goods captured in Dutch ships.

¹ App. 53.

² This document is not at the Record Office.

³ App. 42.

⁴ App. 54.

⁵ App. 55.

Dutch
pro-
memoriâ
asking
for an
explicit
declara-
tion of
Dutch
rights.

head, Yorke had replied that he had never heard of it, but supposed what St. Contest had said to the Dutch representative was founded upon the answer to the Prussian memorial, in which a distinction was drawn between the rights of neutrals recognized by the Law of Nations and those established by particular treaties. The Pensionary seemed to desire some more explicit declaration of Dutch rights than was contained in the English reply. Three days later¹ he transmits a *pro-memoriâ* from the Grand Pensionary on this subject, which he desired to have laid before the King as a private request ; by it Yorke was besought to obtain from his court a declaration that the treaty of December 1, 1674, and all other subsisting engagements between England and the Republic would always be carefully and religiously observed, and that in consequence the subjects of their High Mightinesses would be free to transport in their ships goods belonging to the enemies of England, and that the British Court intended to abide exactly thereby on every occasion.

New-
castle
declines
to give
the de-
claration
asked for.

To this Newcastle sent a detailed reply on May 18 ;² that the King was of opinion that St. Contest's suggestion was made with the object of throwing upon his Majesty the blame for the miscarriage of the Dutch negotiation, or, if it succeeded, to lay by that means the foundation of a perpetual neutrality with Holland, and pointed out that the words in the Dutch *pro-memoriâ*, 'pour avoir des assurances qu'en cas de guerre le pavillon de l'Etat soit respecté, particulièrement par ceux avec qui la France se trouvera en guerre,' appeared to suggest that the French Court was on the point of coming to a rupture with England. It would be very improper to give any declaration of the sort in order to satisfy the French Court, and unnecessarily to confirm the existence of a treaty on which sooner or later the King and the Republic must have an amicable explanation. On a recent occasion where

¹ App. 56.

² App. 57.

an appeal from the Court of Admiralty was brought in a Dutch case, the Council had been of opinion that some explanation of that treaty would be necessary, and Newcastle ventured to foretell that whenever England should be so unhappy as to be engaged in a war with France, she would begin by insisting that, pursuant to the treaty of 1678,¹ the Republic should immediately send the succours therein stipulated, and within two months declare war against France; and in the event of refusal she would declare that that part of the Marine Treaty which stipulates 'Free Ships, Free Goods' would not be observed. In fact, as he pointed out, the treaty of 1674 provided for the case of Holland being neutral, while Article 5 of the treaty of March 3, 1677/8 stipulated that if one ally were attacked the other should break with the aggressor within two months after the rupture, and so nullified Article 8 of the treaty of 1674. He said this argument had been strongly pressed during the late war, when the Dutch minister claimed the full execution of that article. Consequently the King could not possibly give such a declaration as was asked for. He enclosed copies of the two articles referred to.

Newcastle repeated the same arguments in a conversation he had with Count Bentinck.² He also added that as the two treaties were plainly inconsistent, if the King were formally to declare that the first was still valid, he would certainly demand that Holland should simultaneously undertake that whenever England was at war with France, she would immediately send the stipulated succours and declare war within two months. This intimation seems to have had the expected influence on the minds of the Dutch ministers when they returned to the charge in a second paper, transmitted by Yorke on May 29.³ In this they argued that the treaty of alliance of 1678 did not derogate from the commercial treaty of 1674, but merely added fresh stipulations, which in certain

¹ Jenkinson, i. 213.

² App. 58.

³ App. 59.

events would nullify the condition in the former as to 'Free Ships, Free Goods'. They put four cases in which it would not have this effect. As they pointed out, in 1744 a declaration such as was now asked for had been given, and the Admiralty had in fact applied the principle, in conformity with the treaty of 1674. In conclusion they said that if these fresh representations failed of the desired effect, they would prefer to abandon their request.

Dutch
Ministers
withdraw
their
request.

With great promptitude Newcastle replied¹ that this document contained not one word affording any security that, if the undertaking were given, France would not put forward some fresh demand, or emphasize those already made, for pretended satisfaction for French goods supposed to have been captured in Dutch ships; they would do this directly, on their own account, if the Republic should refuse to do it for them. On this answer² being communicated to the Dutch ministers, they said they had never meant to persist in their demand, if it proved disagreeable to the King. They had been led to prefer it by the order given in 1744 to the Lords of the Admiralty, to pay all possible regard to the treaty of 1674, in the instructions to be given to their cruisers, but now, seeing that the thing was impracticable, they desired, if possible, that the question might be entirely dropped. Newcastle's answer³ was that the King readily consented, and the Dutch Government declared their entire satisfaction with the result.⁴

¹ App. 60.

² App. 62.

³ App. 61.

⁴ App. 63.

CHAPTER XIV

ENGLISH APPLICATION TO THE COURT OF FRANCE FOR *BONS OFFICES*. ATTEMPT OF FRENCH GOVERNMENT TO ASSUME THE PART OF AN ARBITRATOR. SUBSEQUENT ENDEAVOURS OF FREDERICK THE GREAT TO COME TO A DIRECT ARRANGEMENT WITH ENGLAND.

FREDERICK had been careful, so far back as November 1751, to provide his diplomatic representative in Paris with a detailed statement of his grievance against England in this matter, for communication to the French Government. It was therefore natural enough that the British Government should in their turn lay the justification of their conduct before the French Court, and ask it to use its influence with the King of Prussia, and induce him to abandon the attitude he had, in their opinion, so unreasonably assumed. They were of course aware of the defensive alliance between France and Prussia which had been hitherto of so much value to Frederick—of more value than he was always willing to acknowledge. It was not inexcusable to imagine that he might be willing to listen to the counsels of his ally. Frederick had published his grounds of action to the whole of Europe, and the British Cabinet merely followed his example in acquainting all the Powers, including France, with the counter-arguments on which they relied. All they asked was that France should employ her 'good offices'. The French Government, however, tried to convert this into a request for their mediation—a very different thing—and even attempted to get themselves accepted as arbitrators. They went so far as to assure the Spanish Government, whom they were anxious to detach from England, that 'mediation' had been specifically asked for, but without succeeding. In addition to this, they endeavoured to

British Government asks good offices of the French Court to induce Frederick to abandon his purpose.

mix with the question of the Prussian ships a dispute that had been going on with England ever since the treaty of Aix-la-Chapelle in 1748 regarding prizes captured by England before the declaration of war in 1744, on the ground of an agreement of July 8, 1748, to appoint commissioners for the restitution of prizes made *after* the signature of the preliminaries of peace. Had the English Government anticipated the way in which their request would be misrepresented, they assuredly would never have put it forward.

Holder-
nesse's
instruc-
tions to
Albe-
marle.

A preliminary dispatch from Holdernessee to Albemarle of February 8,¹ in forwarding a copy of Newcastle's reply to Michell, and promising printed copies of the other papers as soon as they were ready, gave a brief account of what had passed since the spring of 1752, but instructed him not to enter into a discussion with the French ministers for the present. In a further instruction of the 15th² he referred to the repeated assurances given by Louis XV of his earnest desire to co-operate in the preservation of peace, which induced King George to communicate to him 'this extraordinary transaction'. Printed copies of the Prussian documents were enclosed, to be distributed to St. Contest (the Minister for Foreign Affairs) and his colleagues in the ministry. Holdernessee observed that firstly, the English Courts of Admiralty proceeded solely upon the Law of Nations in cases not governed by treaty; secondly, that from the facts quoted in the lists annexed to the Prussian memorial and the arguments adduced, it appeared evident that the King of Prussia had no right whatever to make reprisals on his Majesty's subjects; thirdly, that even if his Prussian Majesty was entitled to make reprisals, stopping the payment of what remained due on the Silesian loan would, from the circumstances of the case, be unjustifiable. Albemarle was to say that 'His Majesty doubts not but from the consideration of justice and friendship the French King will

¹ App. 64.

² App. 65.

use his good offices ¹ with the King of Prussia to comply with his solemn engagements to discharge the debt', and he added: 'His Majesty has so just an opinion of the equity of the Court of France and of their real desire of maintaining the tranquillity so happily established in Europe, that the King will not suffer himself to doubt but that His Most Christian Majesty will interpose in a case where the most solemn treaties are broke through in a violent and unjustifiable manner, without the least colour of reason.'

Albemarle replied on the 21st ² that he had delivered the papers to St. Contest and used the arguments suggested, repeating Holdernesse's language about 'good offices'. St. Contest had replied in the most friendly manner, and said 'he had no doubt the King his master would interpose his good offices and use his utmost endeavours to reconcile these differences in such a manner as would be agreeable to His Majesty'.

About the same time Frederick wrote to Earl Marischal at Paris that he thought King George had no desire to push things to an extremity on account of so trifling a matter.³ He had heard from London that a copy of the English reply had been sent to Albemarle for communication to the French Court, with a hint that His Britannic Majesty would be charmed 'que la France voulût employer ses bons offices auprès de moi pour chercher à me convaincre de la légitimité des démarches de l'Angleterre dans cette affaire et pour m'engager en même temps à revenir des résolutions que j'avais prises sur l'arrêt des fonds de Silésie.'

Frederick to his Ambassador in Paris.

A week later Albemarle wrote ⁴ that he had asked St. Contest for a reply, who said he should like to have a few days more to weigh the matter maturely, when he

French reply delayed.

¹ The distinction between *bons offices* and *médiation* is well recognized. See Nys, *Le Droit international*, iii. 59.

² App. 66.

³ *Pol. Cor.* ix. 357 (February 6, 1753).

⁴ App. 67.

would make a report to the King in Council. He (Albemarle) had reason to believe that the delay was in order to gain time for an answer from Berlin, whither a dispatch had been sent by messenger directly after the receipt of the papers.

Holderness informs Albemarle of suspected designs of Frederick on George's German territory.

A 'separate' dispatch of March 1¹ from Holderness informed Albemarle that the King was well pleased with St. Contest's reception of the communication. His Majesty had heard it *surmised, and perhaps not without foundation*, that Frederick had purchased or was about to purchase the Anhalt pretensions on the Duchy of Lauenburg of which the King and his ancestors had long been in possession, and that Frederick was taking measures to make himself master of it by force; and it was supposed that it was in order to be ready to make a stroke there or in some other part of the King's German dominions that Frederick was forming camps at different points of his frontier. Should that really be the case, or should Frederick, in consequence of the dispute or of such measures as it might be necessary for the King to take in vindication of the rights of his British subjects, presume to attack any part of his possessions, King George would then have a right to claim the solemn guarantee of all his territories given by France in Art. 20 of the Treaty of Aix-la-Chapelle. On March 14² Holderness wrote again that the King had news of Frederick's warlike preparations, such as buying artillery horses and amassing forage on the frontier, probably with the object of deterring the King from vigorously supporting his subjects. But Frederick would find himself mistaken if he supposed that this would have any such effect. 'This Proceeding of the Court of Berlin is a national insult, and should the King be drove to a Necessity of resenting It (which, however, His Majesty is determined to postpone as long as possible), and should His Prussian Majesty, in consequence of such necessary Measures form any Hostile Designs against any

¹ App. 68.

² App. 69.

Part of His Majesty's Possessions in Germany, the World will see the unshaken Fidelity of the King's subjects, and that they are ready to sacrifice their Lives and Fortunes in His Majesty's Defence. But the King still hopes, that the Interposition of His Most Christian Majesty will prevent the fatal Effects of a Perseverance, on the Part of the King of Prussia, in the arbitrary and unheard-of Proceeding, which he has threatened. . . . should His Majesty's German Dominions be attacked in consequence, and on account, of an English Quarrel, such a Violation of the Laws of the Empire, and of Publick Faith, such a Proceeding would necessarily call upon the Court of France even to join their Forces against the Agressor.' ¹ He then added in French the very words he and Newcastle had by the King's direction used to Mirepoix, and instructed him to read the passage to St. Contest. They amounted to a formal invitation to France to declare that she would set her forces in motion to defend the King's German dominions from attack by Frederick, and held out the prospect that if she did not, the consequences would be a general war.

Albemarle found that St. Contest had received from Mirepoix the *note verbale* read to him by Holdernesse and

¹ See *Pol. Cor.* x. 118 (October 8, 1753). In a letter to Earl Marischal Frederick ridiculed the idea attributed to King George of retaliation by seizing Prussian ships, and suggested by St. Contest as a possibility. He says that the insurance had been effected in England, so that the loss would fall on British subjects.

The language about 'insult' is not the King's alone. See Henry Pelham to Newcastle, July 13, 1753 (Coxe's *Life of Henry Pelham*, ii. 485). In a letter to his brother, of July 17, Newcastle says: 'The King was for some days extremely uneasy with me for having let the Prussian ship go by (the only way his Majesty often said, of doing anything for the support of the honour, &c.) and that he should be told that his regard to his German dominions was the occasion of it, when I knew the contrary. Of late we are a little easier, and very properly are turning our thoughts now to what is next to be done. Sending away Michell, prohibiting Commerce with Prussia, &c., have been mentioned by the King. These are all future considerations, but I daresay we shall all be of opinion that something must be done.'

French
reply
that the
Report of
the Law
Officers
asserts
principles
of prize
law which
cannot be
admitted.

Newcastle,¹ to which he sent a rejoinder.² This paper, headed 'Note à lire à Mo^r le Duc de Newcastle et à Mons^r le Comte de Holdernesse', speaks of the English request for *bons offices*, but observes that the English reply to Prussia contained statements of principle respecting prize law which could not be admitted by any Power or commercial nation; and at the same time mixes up with the Prussian dispute the question pending between France and England respecting prizes taken from the French subjects both before and after the peace of Aix-la-Chapelle.³ The French reply caused great dissatisfaction in London; a long dispatch⁴ was addressed to Albemarle commenting severely on the facts that, first, it contained no mention of the King's German dominions; second, affected to regard an atrocious national insult as of trifling importance, and third, talked of reconciling the conflicting interests regarding the prizes taken from Prussian subjects. This was not the point on which French interposition had been asked. Frederick's detention of the money due to private persons, for which he had made himself liable by solemn treaties, was a national affront. The French Court had been asked, not to enter into a discussion of the point of right, but, to induce Frederick to pay what he unjustly and insultingly detained. The dispatch evinced some distrust of the French Court by intimating that the King 'will not suffer himself to be amused', and hinted that if the King of Prussia remained obstinate, George II might be forced to take hostile measures. If, out of revenge for the just reprisals to which the King was entitled, any part of his dominions were attacked, he would have a right to claim the fulfil-

¹ App. 69.

² App. 70.

³ This attempt to drag in a question which was under discussion between the French and English Commissioners at Paris ought to have acted as a warning to the British Government, that they would derive no assistance from the French, and it would have been more prudent on their part to have dropped the request for *bons offices* with Frederick forthwith.

⁴ App. 71.

ment of the solemn guarantee of France. It went on to say that Holderness was at a loss to understand the statement that the reply to Prussia set up principles that could not be adopted by any trading nation, and desired Albemarle to 'get a further explanation of these dark Surmises and ambiguous Expressions'. He did not, he said, see why the question of the French prizes had been introduced into a paper relating solely to the dispute with the King of Prussia.¹

Frederick had written to Earl Marischal to assure St. Contest that he had no hostile intentions against Hanover.² St. Contest was welcome to assure Albemarle that unless the King of England insulted him or was the first to attack, France would march the whole of her army to support the King of England against a Prussian invasion of a single Hanoverian village. The rumours of his pretensions to Lauenburg were ridiculous and without foundation. At the same time he told his own Foreign Secretaries that he would not absolutely refuse the *bons offices* offered him by France, being assured that he could not place his interests in better hands. It was his intention to communicate to the French Government the rejoinder which was in the course of preparation, and if France was able to induce the Court of London to surrender to reason and lend itself to what was equitable, he would be very glad. According to St. Contest³ there was every reason to expect that the dispute would be arranged, and it seems that both he and Mirepoix were under the impression that the answer he had sent to Newcastle and Holderness⁴ had proved satisfactory; but, as we have just seen, that was far from being the case. Frederick now began to confuse *entremise* (intervention)

Frederick denies hostile intentions attributed to him.

¹ The reasoning seems to be that Frederick by sequestrating the balance of the loan became the original aggressor. If he thereby provoked reprisals, and in revenge for them attacked Hanover, France was bound to make it a *casus belli* with him. This seems a little far-fetched.

² *Pol. Cor.* ix. 385 (letter of April 3).

³ App. 72.

⁴ See App. 69.

Confusion between intervention and mediation.

and *médiation*.¹ From Michell, however, he received a warning that if he persisted in withholding the balance of the debt, the English would continue to regard his action as insulting, and would take steps in consequence.² Pelham, who had hitherto discountenanced violent measures, had lately said that if Frederick went on as he was doing, he would reluctantly be compelled to adopt his brother's view of the necessity of taking action to support the honour of the crown and nation. Michell had also learnt from a trustworthy source that the Cabinet would not be indisposed to afford reasonable satisfaction, provided Frederick did not himself fix the amount, but completed the payment due, and provided it was amicably arranged by private negotiation, so as not to give a handle to the subjects of other neutral powers who had been in the like case with Prussian subjects. Otherwise the ministry would be forced to do something to uphold the honour and glory of the nation, for on this their own position depended, and they would incur the consequences, however dangerous, rather than risk the safety of their administration, such being, he said, the motives which ordinarily guided English ministers.

French reply that no case existed for fulfilling the guarantees of the Treaty of Aix-la-Chapelle. They maintain that 'free ships, free goods' is part of the Law of Nations.

Albemarle duly communicated the contents of Holder- nesse's dispatch of April 2³ to St. Contest, who replied that his Court would not make the slightest difficulty about acknowledging the obligation arising from the guarantee of 1748 when the case presented itself, but in the present instance, if King George found himself compelled to attack Frederick, France would not look on that in the light of reprisals, but as an aggression. Albemarle retorted that Frederick was the aggressor, to which St. Contest replied that they were doing all they could at Berlin, but had no more influence over Frederick than King George over Maria-Theresa. He then adverted to the English maxim that enemy goods could be taken in

¹ *Pol. Cor.* ix. 393.

² *Ibid.* 410.

³ *App.* 73.

the ship of a friend, which he maintained was contrary to the general Law of Nations, and consequently the French had a right to claim the goods of French subjects taken during the war, 'the treaty of Commerce between England and Holland in 1674 having recognized that doctrine.' Albemarle replied (as he was bound to do) that the treaty in question was an exception to the Law of Nations, which it inverted by a private agreement between those two Powers that did not affect [i. e. confer a right on] any other nation. It is evident that Albemarle delivered himself of his instructions in a very thorough manner. He reported on April 18¹ that Frederick had accepted 'the Interposition and Good Offices' of the Court of France. This dispatch crossed on its way one from Holderness announcing that the King would let the affair rest for the present, in order to see what part the King of Prussia would take.

Then, on the 20th April, the French Government spoke out their whole opinion on the controversy in a *mémoire* delivered by Mirepoix, in which certain portions of the Report of the Law Officers were criticized.²

Mémoire
delivered
by the
French
Govern-
ment.

This document does not professedly aim at discussing the merits of the dispute between the Courts of London and Berlin, but as the principles laid down in the answer of the Duke of Newcastle to the Prussian secretary and in the report annexed to it, and some of the allegations therein contained, were held to affect the rights of the King of France and the property of his subjects, it became necessary to distinguish the principles and facts on which there was agreement, and to investigate those on which there was a difference of opinion.

[It will be found, however, that incidentally the *promemorié* bears on all the important points in the Prussian *Exposition des motifs*, for which reason it is thought necessary to summarize its contents, as follows :]

¹ App. 74. ² *S. P. For., Foreign Ministers in England*, vol. 9; App. 75.
1783

FIRST PART

Principles respecting the condemnation of prizes ; that they are to be decided by the rules of the Law of Nations and by treaties, is recognized by all nations.

We agree with the English lawyers (*magistrats*) that when two Powers are at war with one another, they have the right of taking from each other ships, merchandize and goods (*effets*) met with on the high seas ; everything belonging to the enemy is good prize, but what belongs to a friend cannot be, as long as he observes neutrality.

The English lawyers draw several inferences from this principle.

1°. The goods of an enemy can be seized, although on board a friendly ship.

2°. That the goods of a friend ought to be restored, although found on board an enemy ship.

These inferences appear to follow naturally from the principle just mentioned, but as the exception is often a confirmation of the rule, it might perhaps be maintained that the friendly flag covers the merchandize of the enemy, and *e converso* the enemy flag renders the merchandize of a friend subject to condemnation.

Perhaps it is the uncertainty of these inferences that has led most nations which have concluded commercial treaties to stipulate that their flag shall cover the merchandize of the enemy except contraband.

Treaties generally regarded as confirming the Law of Nations.

It is not pretended to decide whether these treaties form an exception to the Law of Nations, or a confirmation of it, though they are commonly regarded as the latter.

In any case the treaties of France with England and Holland are express on this question.

The English lawyers have drawn a third inference from the principle cited, namely, that contraband merchandize carried to the enemy, though belonging to a friend, is good prize, because to furnish the enemy with the means of carrying on the war is to violate neutrality.

In default of precise enough notions, treaties made between different European nations ought to be regarded as the least equivocal and most impartial enunciations of what is held in regard to contraband.

By treaty this term ought in general to be restricted to soldiers, horses, arms and munitions of war, and provisions carried to a place that is besieged or blockaded.

Contra-
band of
war.

If prize has been made of cargoes of timber, hemp, and wheat not going to such places, it would prove that the English courts have not always had treaties under view.

Secondly. Of the proofs required for the condemnation of prizes, and of captures, made before the war, and damages and interest for ships unjustly taken.

[The arguments that follow are addressed mainly to the case of French ships taken before the declaration of war in 1744, of which France was claiming restitution. They are, however, directed to certain statements of law and practice in the Report of the Law Officers.]

Thirdly. The principle enunciated by the English lawyers as to the effect of treaties renders it certain that all goods belonging to Frenchmen and taken in Dutch ships ought to be free. To support this view the 8th article of the Anglo-Dutch treaty of 1674 is quoted and the observation is made that to pretend that French subjects would not be entitled to claim their restoration would be to go contrary to the good faith with which treaties ought to be carried out.

French
goods in
Dutch
ships
ought to
be free.

SECOND PART

What Authority may judge prizes taken at sea.

The opinion of England is that they ought to be judged in the last resort by the Power whose subjects were the captors.

This principle utterly destroys the Law of Nations. It is held that by the Law of Nations prizes can only be judged *provisionally* by the courts of the Power whose subjects were the captors, and *definitively* not alone by

That
prize
cases are
only pro-
visionally
decided
by prize-
courts.

If either party is dissatisfied with the judgement, justice requires a resort to arbitration.

the Power whose subjects were the captors, nor by that of whose subjects the property has been taken. If one of the two Powers appeals against the judgements pronounced by the courts of the other, or if it demands that commissioners be appointed on both sides to decide, a reference to the decision of commissioners cannot be refused without denial of justice. And in case the commissioners do not agree, then prudence, impartiality, and justice ought to induce the parties to choose a third Power as arbitrator. The interpretation placed by the English Law Officers on the opinion delivered by Heineccius,¹ and on a number of treaties cited by them, is incorrect. All that he says goes no farther than the statement that the property in a prize does not pass to the captors until judgement has been given by an Admiralty Court, and by no means supports the inference that the Power whose subjects have been deprived of the ships has no right to inquire whether the deprivation is just, and to demand reparation. Heineccius himself, in section 22 of the work cited, expressly states that if the judgement of the Admiralty Court is unjust, the Power whose subjects have been wronged may claim restitution by diplomatic means. An independent Sovereign cannot be bound by the decisions of a foreign Court, and it is pointed out that this principle is recognized in the Report of the Law Officers.²

The treaties referred to in the Report of the Law Officers do not bear out their contention.

Secondly, as to treaties. Some of those which stipulate for prizes being tried by an Admiralty Court with appeal to a Superior Court are cited in the Report, but none of them engages to renounce the rights of presenting claims against the judgement, of appointing commissioners, or of making reprisals. The treaty between England and Holland of 1674, article 12, explained by article 2 of the treaty of Westminster of February 6, 1715/6, does not stipulate that the Dutch *in the last resort* are to apply to

¹ p. 16 of 4° edition, foot-note.

² p. 24 of 4° edition, par. 2. 'Every foreign Prince in Amity, &c.'

the Court of Appeal, as is incorrectly stated in the Report.¹ The greater number of the treaties referred to in the foot-note² expressly establish the principle that these cases constitute not merely litigation between private individuals, but between nation and nation, in which the public authorities (*ministres publics*) intervene. [Summaries of provisions in this respect are given.]

Thirdly.

[A powerful criticism of what is laid down in the Report (on page 16 of 4° edit.) follows in four paragraphs, beginning, 'If a subject of the King of Prussia.' The argument is that prizes taken at sea involve questions of an international character, and are not in the same category as suits between private individuals, and that the means of redress against injustice are provided by international law and practice, by the appointment of commissioners by both disputants, by the resort to arbitration in the first place, and finally to reprisals. The position of the Law Officers that 'the Prussian claimants must know that by the Law of Nations they ought not to complain to their own Sovereign till Injustice *in re minime dubia* was finally done them, past redress'³ is disputed with respect to a wrong of an international character. Finally, the conclusions of this *pro-memoria* are applied to the dispute between England and France respecting prizes made as far back as 1739.]

Prize cases are international questions.

The object of the French memorandum is to establish 1°, the principle of Free Ships, Free Goods, as applicable to French goods captured in Dutch ships during the war, no matter whether in virtue of the general law of nations, or of the Anglo-Dutch treaty of 1674, or of the commercial treaty of Utrecht. 2°. That the judgement in prize cases delivered by an Admiralty Court of the captor's country is not final, that there is no obligation on the

Objects of the French memorandum summarized.

¹ 4° edition, p. 28.

² *Ibid.*, p. 14.

³ p. 23 of 4° edition.

owner of the ship or goods to go through the formality of appealing to a superior court before claiming the intervention of his own sovereign in order to obtain justice.

3°. That prize cases are not really suits between private persons, but are contentions of justice and right between the Sovereigns, one under whose flag and protection the captured vessel was navigating, the other under whose commission the captor was acting.

4°. That consequently it is right and proper, in the interests of peace, to appoint commissioners on both sides to arrive at a final decision in each case, and in the event of disagreement to refer it to a third Power as arbitrator.

Referred
to the
Law
Officers.

This *pro-memoria* was sent on to the Law Officers of the Crown on June 13, with instructions to prepare an answer forthwith, in case the King should order one to be given.¹ The delay was owing to the parliamentary recess, some of the members of the Council who were usually consulted on foreign affairs being out of town. The day after its delivery to Newcastle and Holderness, Mirepoix called on them and stated that the King of Prussia had accepted the mediation offered by the French Court, and that the question now was what course of reconciliation (*voye de réconciliation*) would be proposed by the British Court.² Although the word 'mediation' is here introduced, Frederick was writing on that very day to Michell that, provided England were reasonably disposed, all might be arranged by the 'good offices' of France.³

Obsti-
nacy of
both
parties.

Albemarle, to whom a copy of the *pro-memoria* had been given by St. Contest, concluded from the adoption in it of Prussian maxims and doctrines that French interposition with Frederick was not likely to prove efficacious.⁴ The truth is that at this moment neither party was disposed to give way. Frederick was determined not to depart from the course he had chosen.⁵ On the other

¹ *S. P. For., France*, vol. 247.

² *Pol. Cor.* ix. 408.

³ *App.* 76.

⁴ *App.* 77.

⁵ *Pol. Cor.* ix. 416.

hand, the English ministry instructed Albemarle¹ that the only proposal they had to make was that Frederick should immediately pay off what remained due, and that if he did this, then the King would see that justice was done to the complainants in accordance with the means prescribed, known and used in such cases. They even hinted to Mirepoix that if the King of Prussia did not agree to this demand, measures might be taken to exact redress for the wrong done to the bondholders. St. Contest admitted to Albemarle² that the debt ought to have been discharged in 1745 [i. e. January 1745/6], but excused Frederick's omission by saying that England was then at war; as if he had a dim idea that for a neutral Sovereign to pay money owed to the subjects of a belligerent was a sort of violation of neutrality. Frederick remained unwilling to take the first step;³ he did not insist on obtaining *public* satisfaction, and all he cared about was that in some way or other his injured subjects should be compensated. He even went so far as to say that provided there was a serious wish to satisfy them, he would first take off the sequestration. St. Contest professed to hope that the French King's interposition at Berlin would have the desired effect.⁴ The English ministers doubted the good faith of the French, who appeared to have wilfully misunderstood the nature of the application made to them; they had tried to assume the part of mediators and to put themselves forward as judges of the merits of the dispute.⁵ In fact, the French minister at Berlin was instructed to propose the appointment of an Anglo-Prussian Commission, on condition that the bondholders should be paid as soon as its members had been appointed and met, but Frederick replied that he would prefer to leave the whole business to French

¹ App. 78 and 79.

² App. 80.

³ *Pol. Cor.* ix. 425.

⁴ App. 81.

⁵ See dispatch to Keene of May 26, R. O. *S. P. For., Spain*, 143; App. 82.

mediation and arbitration.¹ George's ministers continued to hold firmly to their contention that nothing could be done until the debt was discharged. They sent uncompromising instructions to Albemarle, while apparently using milder language to Mirepoix.² Still, they had never asked for anything but *bons offices* from France, and they believed that the French Government from the first had wilfully interpreted this to mean mediation;³ and it became clearer that what they understood by the 'means prescribed, known and used in such cases' was carrying the prize suits to the highest court [and abiding by its decision].⁴ In June the French Government began to feel hopeless of arranging the dispute, and a considerable gap occurred in their correspondence with Mirepoix.⁵

Alternative suggestions for a settlement made by Frederick.

On July 1 Frederick gave instructions to propose to the French Government three alternative ways of settling the affair:⁶ 1st, If France would guarantee to him the payment by England of the ascertained losses of his subjects [as given in the list delivered by Michell to Newcastle], he would at once release the money; 2nd, that France and another Power, either Holland, Denmark, or Spain, should arbitrate and England undertake to abide by the decision of the arbitrators; or 3rd, that England should privately satisfy his merchants, whereupon he would publicly pay the balance due. He did not believe that George II would frivolously go to war at his advanced age on account of a comparatively trivial sum, not a tenth of what a month's war would cost. Early in the same month Newcastle, in Holderness's absence, sent to Albemarle a 'very secret' dispatch,⁷ recording conversations with Mirepoix, in which he had told him that England would insist on the Prussian complainants carrying their cases to the Court of Appeal, and would not consent to the appointment of commissioners, nor would she

¹ *Pol. Cor.* ix. 440; May 29.

² *App.* 86.

³ *Pol. Cor.* x. 1.

⁴ *App.* 87, 88.

⁵ *App.* 83, 84, 85.

⁶ *Pol. Cor.* x. 8; *App.* 89.

⁷ *App.* 90.

give any assurance as to a negotiation with Prussia until Frederick had removed the sequestration ; and Albemarle was instructed to communicate all this to St. Contest. In another letter of the same date¹ he informed Albemarle that if the French answer proved unsatisfactory, orders would probably be sent to declare that the King would no longer delay making, or authorizing his injured subjects to make, reprisals. Michell was told by Mirepoix² that the English ministry was ready to afford all reasonable satisfaction to Frederick's subjects, but that it was not possible to take the affair out of the hands of the lawyers. This induced Frederick to propose at Paris a fourth alternative, namely, that if England would give an undertaking, of which France would guarantee the performance, that a certain sum would be privately paid to the claimants, in proportion to the liquidated total, he would at once take off the sequestration. He would be willing to consent to the deduction of 30,000 or even 40,000 thalers, if St. Contest thought it fair [the liquidated total being 189,700 thalers and a few pence].

Further correspondence between London and Paris³ shows that the English Ministry were resolved not to make any concession, and that Mirepoix was warned that, in case of an unsatisfactory reply, the negotiation with France would be carried no farther. St. Contest, as we learn from Albemarle's report of July 18,⁴ still advocated the appointment of commissioners, and he quoted precedents, one of them from Cromwell's treaty of 1655 with Louis XIV.⁵ Albemarle reported that he had rejected the proposal as altogether inadmissible ; commissioners could only be appointed where that was expressly provided by treaty ; otherwise the ordinary course of going to the Courts must be followed.⁶ St. Contest had by this time

British Government still refuses to make any concession.

¹ App. 91.

² *Pol. Cor.* x. 18.

³ App. 92, 93.

⁴ App. 94.

⁵ *Jenkinson's Treaties*, i. 81.

⁶ He might have added that the treaty of 1655 was a treaty of peace.

evidently received the dispatches containing Frederick's proposals,¹ as he returned to the idea of a joint-commission, with either France, Denmark, or Sweden as arbitrator. He told Albemarle that Newcastle was reported to have said to Mirepoix that 'although the proposals made by the English Court were too humiliating for the Prussian Court to accept, and were even impracticable, they could not be departed from'.² This assertion produced an indignant denial from Newcastle³ of ever having used such improper language. Evidently the phrase *une démarche trop humiliante* was added by Mirepoix.

Belief in danger of a Prussian attack on Hanover leads to resumption of negotiations with Russia.

In England the likelihood of the affair ending in a Prussian attack on Hanover was considered so serious, that the negotiation that had been dragging on since the beginning of the year was resumed with Russia for subsidizing a large body of troops to act against Frederick if matters should go so far.⁴ The distrust of the King of Prussia was not unnatural, if the marching of troops into Silesia in 1741 while negotiations were going on at Vienna is recalled.

Correspondence between Newcastle and Henry Pelham.

A letter of July 27 from Newcastle to Pelham⁵ gives a very full account of the conversation with Mirepoix the day before, in which the latter proposed that commissioners should be appointed, leaving the final determination to a neutral Power. This was contained in a dispatch from St. Contest which Mirepoix had read to him, often skipping a passage. After some discussion of a rather lively character Mirepoix had suggested that on Frederick removing the embargo, £15,000, say one-half of the amount demanded by him, should be paid without its being known, a proposal which the writer had rejected. The proposal for the appointment of commissioners had been previously reported by Albemarle, and had been

¹ App. 95.

² App. 96.

³ App. 97.

⁴ See de Martens, *Traité et Conventions*, ix (x), p. 177, for the history of this negotiation, and also p. 140 *supra*.

⁵ Coxe's *Life of Henry Pelham*, ii. 486.

considered on the night of the 26th by himself, Hardwicke, Granville, Holderness, and Anson, and definitively rejected. Pelham replying on the 28th agreed that 'no pecuniary bargain should be made antecedent to the King of Prussia revoking his *arrêt*: that once done, sure ways might be found to satisfy the individuals of his country, who may possibly have been a little hardly dealt with by our law; and if such a sum as Mirepoix mentions can do it, that might be found'.

The British Government were all the more disposed to remain firm, because they had learnt that Frederick was alarmed at the motions of Russian troops towards the frontier of Livonia,¹ and they sent explicit instructions to Albemarle in the shape of a memorandum to be read to the French minister,² promising that when Frederick had satisfied the holders of the loan, Prussian subjects would be allowed to appeal in those cases where it was still possible, refusing to appoint commissioners, thanking Louis XV for his good offices, which King George was sorry to find had failed of the desired effect, and leaving it to the French king to consider whether it was desirable to continue the negotiation, unless within four weeks from date the King of Prussia thought fit to offer more satisfactory explanations, or the King of France could discover some expedient, not open to the objections which rendered St. Contest's last proposition to Albemarle inadmissible.

Albemarle reported on August 15³ that he had seen St. Contest on the previous day, who had heard from Mirepoix of the resolution to insist on the *arrêt* being removed as a *sine quâ non* of further discussion. Thereupon Albemarle read to him the French instructions he had received. St. Contest observed that if England would not make any concession, he saw little likelihood of an accommodation. The French Government had no other suggestion to make. It could not be expected that

British Government notify French Court of their 'ultimatum'.

French Minister replies that he sees no likelihood of agreement.

¹ App. 98.

² App. 99.

³ App. 100.

Frederick would submit his claims to the Appeal Court, nor did the Law of Nations, in his [St. Contest's] own opinion, oblige Frederick to abide by any such decision in affairs that were of national concern and therefore proper to be treated between Crown and Crown.

St. Contest, as is evident, ignored the English argument, namely, that Prussian subjects who were dissatisfied with the decisions of the Admiralty Court must go to the Court of Appeal. This rule has been recently recognized as valid by the Hague Convention of 1907 for the establishment of an International Prize Court. The British Government could not admit a departure from the ordinary course, though they would have acknowledged that when an aggrieved person had exhausted all recourse to judicial methods and was still dissatisfied, his Government might take up his cause diplomatically.

Albemarle insisted that Frederick having inflicted an injury, must make advances by way of reparation, and though this might be thought humiliating, yet a retraction was no more than equity required and was all that had been demanded. St. Contest replied that he saw no way out of the present embarrassing situation, his Court having done all they could, and he had uttered his last word. Some discussion ensued as to the date from which the time-limit of four weeks would begin to count, and Albemarle took it on himself to agree that it should begin to run from the date of this conversation.

Frederick
ready to
accept
80,000
thalers.

Frederick was much encouraged by hearing from London of the conciliatory disposition of Henry Pelham,¹ as indicated in his letter of July 28 above quoted.² He still hoped that the French Government would prevail with the English Ministry to compose the difference on the basis of St. Contest's proposal for the exchange of simultaneous declarations. To his minister in Paris he wrote

¹ *Pol. Cor.* x. 51 (August 16).

² See Michell to Frederick, August 10. An intercepted letter deciphered in London. App. 101.

that he would go so far as to accept 80,000 thalers in satisfaction of his demand. That was less than half of what he had originally claimed.

The French now came forward with another proposal,¹ that Louis XV should pay to Albemarle the sum due by Frederick, and that Albemarle should hand to St. Contest bills of exchange for the amount to which England and France should agree to reduce the Prussian claim,² but this was regarded as no more acceptable than those which had preceded. Albemarle was instructed to inform St. Contest that the British Government agreed to the four weeks beginning to count from August 14, but he was to add that when this period should expire they would look on the negotiation as at an end. King George still adhered to what he had always insisted on, that the removal of the *arrêt* by Frederick must precede all other steps; when that was done, any claim the King of Prussia might have should be heard in the common course of the courts, it being always understood that if the Court of Appeal did not do justice (which, however, was not to be supposed), then, and in that case only, such complaints might necessarily be treated between Court and Court.

New
French
proposal
rejected
by
England.

On this being communicated to St. Contest, he said it could not be accepted, and that he could not but look on the negotiation as broken off.³ Having done all they could to bring about a good understanding between King George and Frederick, the French Court would not undertake to inform the latter that the negotiation was absolutely at an end, but would leave it to Newcastle to make the announcement to Michell. St. Contest quoted a French case in which the claimant, though successful, had been refused costs and damages, as a proof of the little satisfaction that could be expected from the English courts, and he argued that in prize cases the subjects of one nation were not bound by the decisions of the judicature of the other, but that commissioners ought to be

French
Minister
considers
the nego-
tiations
at an end.

¹ App. 102.

² Enclosure in App. 102.

³ App. 103.

appointed, who in case of disagreement, should choose an arbitrator from a neutral nation—in short, the view stated in the French memorandum of April 20.

It is somewhat strange that Frederick should still have been under the impression that the dispute was on the point of being settled, and that the only outstanding question was the exact amount of compensation he was to receive.¹ He thought that the English Government would rather pay something than gratuitously impose on the nation the huge sums demanded by Russia as a subsidy for the loan of military assistance.

The suggestion that Michell should be made acquainted with the failure of the negotiation did not approve itself to the British Ministers,² since that would be inconsistent with the character of the application to the French Court. The object of that step had been simply to let the King of France know that one of his allies had grossly insulted the Crown of Great Britain, and that this offensive proceeding might be productive of disagreeable consequences, unless by his interposition the King of Prussia were brought to desist from his unjust resolve. Holdernessee was of opinion that St. Contest had never thoroughly understood the question, or that he did not know that English prize-court principles and procedure were the same as those which the French Courts observed. Albemarle regarded St. Contest as blind to everything that did not seem to redound to the honour or interest of Prussia.³

Dispute
as to who
first
dropped
the nego-
tiations.

When St. Contest, a couple of months later, returned to the subject,⁴ he replied that since 'this Court' had thought proper to drop the negotiation, he had received no further instructions. This wording was no doubt due to a mistake of the secretary who drafted Albemarle's dispatch reporting the interview, who must have taken it from a dispatch of Holdernessee to Albemarle, but it read as if Albemarle had admitted to St. Contest that the French Court had

¹ *Pol. Cor.* x. 65 (September 3 : To Earl Marischal and Michell).

² *App.* 104.

³ *App.* 105.

⁴ *App.* 106.

broken off the negotiation. Accordingly it was disapproved by Holderness,¹ who maintained that it was King George who, not having received acceptable proposals from the French Court, had thought proper to desist from further negotiation, and as this distinction was of material importance, he instructed Albemarle to make it clear.² The explanation given by the latter in reply was that the expression 'this Court' had slipped into his dispatch through inadvertence.

In the ninth and tenth volumes of the *Politische Correspondenz* there is a vast quantity of private letters and official instructions concerning this question from Frederick to his diplomatic agents in Paris and London, with some extracts from their reports. He seems to have been under the impression that it was only the desire to please King George that induced Hardwicke and Granville to uphold the legality of the Prize Court's judgements ;³ Mirepoix had reported to Paris that Newcastle and Pelham were favourably disposed towards a settlement on the basis proposed by him.⁴ Eichel, writing at Frederick's dictation on September 16, says: '*Es sei bekannt dass das englische Ministerium von selbst bei der Kron Frankreich um die Arbitrage oder auch bons Offices in gedachter Sache angetragen hätte*'; and that they had offered to settle the dispute by the payment of a moderate sum, which offer was accepted by France and transmitted to Frederick, who in turn had accepted. For them now to turn round and change their language was contrary to everything usual among respectable Powers. He therefore still held to the mediation and *bons offices* that England herself had demanded. But in a letter of November 13 to Michell⁵ he expressly says that the English ministers had asked for the *bons offices* of France. If George II was obstinate, Frederick was equally tenacious.

Voluminous correspondence of Frederick with his diplomatic agents in London and Paris.

¹ App. 107.

² *Pol. Cor.* x. 73 (September 11, 1753).

⁴ *Ibid.* 103, September 12, 1753.

³ App. 108.

⁵ *Ibid.* 152.

He would not take off the embargo on the £45,000 still due, until he was assured of receiving at least £20,000 or, as an 'ultimatum', to use his expression, only 80,000 thalers for his injured shipowners and merchants. He had no interest in the proposal to appoint a joint-commission,¹ which was in fact an addition made by the French Government to his suggestions for a settlement, although he had no objection to arbitration by a friendly Power, or 'a good ally' like France.²

Preparation of rejoinder to the Report of the Law Officers.

Meanwhile he had given instructions to Cocceji and others to prepare a crushing refutation of the English reply.³ The German draft was completed by the end of May, and given to a French preacher named Pelloutier to put into French, who completed his version by the middle of July.⁴ It was printed, but not published. A copy was sent to Paris, together with the draft of the *promemoria* by which it was to be accompanied, in October.⁵ The French Government, however, advised Frederick to leave it to Michell and Mirepoix to choose in concert the most suitable and advantageous moment for the presentation of these two papers. They also counselled him not to renew on his own account the negotiation which they had failed to conduct to a successful conclusion.⁶ This

¹ Cf. *Pol. Cor.* ix. 440, but see x. 35, where he says he is quite willing to leave the affair to the arbitration of France and another Power, and that if England will appoint Commissioners he will do the same, leaving to the two arbitrators the points on which the Commissioners cannot agree.

² See also x. 1, for his various expedients for a settlement, and x. 8 for a fourth.

³ *Pol. Cor.* ix. 348, 373, 380; 393, to Earl Marischal, he will communicate to France his rejoinder; 425, May 10, he attributes Mirepoix's want of instructions to the French waiting for this document; x. 38, shows that it was still not ready.

⁴ *Preuss. Staatsschriften*, ii. 470.

⁵ The French Government highly approved of it, but suggested the omission of the adjective *étrange*, or its softening down, because in French this expression sounded somewhat harsh and even insulting (*Pol. Cor.* x. 157 and 186).

⁶ He had entertained a notion that he might profit by the delivery of the 'réplique' to renew the negotiation, which had for some time been suspended.

advice he promised to accept, replying that he would let the affair drag on and take its spontaneous course, resolving also to postpone the delivery until after the rising of Parliament.¹ At the same time he was desirous of finding a way out of his difficulties with England, and he instructed Michell to sound Newcastle through the channel of a friend, as to his willingness to agree on an amount to be paid in place of indemnity and to arrange the rest of the details so as to save appearances. Michell reported that he had tried the experiment.² His friend had found Newcastle well disposed to listen, but unwilling to give an answer before consulting his colleagues. The result, however, was that nothing could be managed in that way; the King and his ministers could go no farther than their previous declarations. His friend represented to him that the existing coldness between King George and Frederick was at the bottom of it all, and the ministers would prefer to lose the remainder of the Silesian debt, rather than to come to an arrangement that would expose them to similar demands from other Powers and bring upon them the national resentment. A further report of Michell's gives the result of a later conversation with his 'friend'.³ The Ministry had held many conferences, but could not treat the affair *de cour à cour* without risking their places: the only expedient they had been able to advise was that Frederick should annul the sequestration; he might then be sure that justice would be done by the Court of Appeal without delay. The Court could not decide the cases with sufficient knowledge unless the complainants appeared as appellants and stated their reasons for appealing. Frederick, as was to be expected, declined to fall in with this view of the matter.

The correspondence between Michell and Frederick continued, but finally he made up his mind to let the

¹ *Pol. Cor.* x. 201 (December 29). ² *Ibid.* 262 (February 15, 1754).

³ *Ibid.* 391 (July 26, 1754). The friend appears to have been Sir Luke Schaub. See British Museum Add. MS. 32849, f. 327.

question sleep, since he had found that the English Ministry were not disposed to recede from their first position.¹

Rejoinder was never presented. There is no mention in the *Politische Correspondenz* of the 'réplique' after January 5, 1754,² and it seems quite certain that it was never presented. Ch. de Martens has printed a portion, consisting of §§ 6-21, and §§ 25-29, and adds: 'M. Michell, qui fut chargé de remettre cette réplique au ministère britannique, eut ordre de déclarer en même temps " que S. M. Prussienne, après l'examen le plus exact de la réponse faite par la commission anglaise, n'y avait point trouvé de raisons suffisantes qui dussent la déterminer à changer de résolution, mais qu'elle n'en était pas moins disposée à terminer cette affaire à l'amiable et conformément à ses déclarations précédentes "'³ As has been seen above, Frederick followed the advice given by St. Contest not to renew the negotiation, at least officially, and it can only be concluded that de Martens misunderstood what he found in Behmer. Had the *Politische Correspondenz* been available when the *Causes Célèbres* was published,⁴ he would have avoided this error. The document never having been presented, it seems unnecessary to reprint here such portions as are available.

¹ *Pol. Cor.* x. 391 (August 6, and 510, December 31).

² *Ibid.* 206, in a dispatch to Earl Marischal.

³ De Martens probably copied what he gave from the text contained in Behmeri, *Novum ius Controversum*, Lemgov. 1771, a book so rare that the writer has been unable to find a copy in any of the public libraries in England.

⁴ In 1827.

CHAPTER XV

RECONCILIATION OF GEORGE II AND FREDERICK THE GREAT. NEGOTIATIONS THROUGH THE DUKE OF BRUNSWICK, AND THEN THROUGH MICHELL

OF all contemporary Sovereigns Frederick the Great was probably the best informed on international politics. Though he had secretaries like Podewils and Finckenstein in the foreign department, he remained his own minister for foreign affairs. His diplomatic agents were carefully selected by himself, and he maintained a voluminous correspondence with them, apart from the official instructions and reports that passed through the official channel. It was his practice to keep his agents posted up on all matters concerning his foreign policy, and he permitted them to write to him with perfect frankness, even tolerating from them counsels and statements which did not square with his own plans and intentions. It is not every Government that receives with patience from its diplomatic servants the expression of unpalatable opinions. Among his agents the most efficient appear to have been Knyphausen, who succeeded the Scotch Jacobite Earl Marischal at Paris in 1755, and Michell, the secretary of embassy who was left in charge of the legation in London when Klinggräff was withdrawn in 1750. Besides his usual sources of information, he had secret agents, at Dresden and in Berlin itself, who were bribed to furnish copies of confidential documents, often of the highest value. Michell, though not a Prussian subject, was faithful, discreet, and intelligent. He had rendered himself *persona grata* to the English Ministry, and had formed private friendships which proved of great utility. With Mirepoix, the French ambassador, he was on intimate terms, and was thus enabled to supply his master with accurate accounts of the progress

Prussian
diplo-
matic
service.

of negotiations with England regarding the disputes in North America and the East Indies, and to furnish Frederick with the means of deciding on the course to pursue.

Policy of
George II.

The ruling motive of George II was the defence of his German dominions against attack, whether from Prussia or France, while Frederick's policy was solely concerned with the security of his hold on Silesia, which he had every reason to suppose Maria-Theresa was bent on reconquering. George II placed his chief reliance on the success of negotiations with Russia for the loan of troops to be utilized as a check upon any designs Frederick might cherish against Hanover. The Hanoverians were fine soldiers, from Hesse-Cassel it was possible to hire a considerable body of auxiliaries, and Brunswick might, under certain circumstances, be counted on for assistance. Help from Saxony and Bavaria in return for insignificant subsidies during peace was also hoped for. Above all, if Frederick could only be detached from his alliance with France, and induced to give assurances that under no circumstances would he attack Hanover when the attention of Great Britain was elsewhere engaged—then George II could feel tranquil. He would allow his English ministers to pursue their projects of expansion in North America, in return for their agreeing to grant subsidies to his German allies. On Maria-Theresa's active support he could not rely. During the last war, it was felt, she had failed to do her part in the defence of the Low Countries, and on her side she held that her interests had been sacrificed to those of her arch-enemy Frederick in the preliminaries of Aix-la-Chapelle. The sinister effect of the dispute about the Barrier Treaty on her policy has already been mentioned. The general result of the wars waged with Prussia and France from 1740 to 1748 was to leave on her mind a deep impression that England was not to be depended on as an ally and that she would always leave her friends in the lurch where her own

interests were involved.¹ To this must be added the growing influence of Kaunitz, who as far back as 1749 had advocated a better understanding with France, where he was sent as ambassador in the following year,² returning to Vienna in 1753 to take the direction of foreign affairs. Newcastle's favourite policy had always been a close alliance with Austria and Holland, with the addition of Russia, as the only means of restraining French ambition. This was the old 'system' initiated by William III in 1701, which Newcastle now found himself compelled to abandon, at least as far as Austria was concerned.

Frederick greatly doubted the usefulness of France as an ally. He felt that she had deserted him on more than one occasion, and since 1748 he held that she had shown great weakness towards England. His efforts to induce the French Court to adopt more vigorous measures, as soon as a renewal of the conflict with England began to appear imminent, may be read in his correspondence with Paris almost up to the moment of his entering into the Treaty of Westminster. They failed completely. If he could not put his trust in French assistance against Austria, would it not be wiser to come to an understanding with Great Britain, wealthy enough to provide subsidies, and knowing her own mind? Not that he desired pecuniary help for himself, but it had become clear that Austria would no longer be able to obtain funds from that source. If England made suitable offers to him he would be disposed to entertain them.

Views of
Frederick.

In October 1754 the hereditary Prince of Hesse-Cassel turned Roman Catholic, but was compelled by his father to give a written undertaking for the maintenance of the Protestant faith in the dominions he might one day inherit, and the Protestant Powers were asked to guarantee its execution. Frederick at once complied, and suggested that George II, the landgrave's father-in-law, should be

Hesse-
Cassel
incident.

¹ Arneth, iii. 389.

² Waddington, *Louis XV et le Renversement des Alliances*, p. 285.

asked to join. This gave occasion for George II in January 1755 to express to Frederick his thanks for his prompt action, through the channel of Newcastle and Michell.¹ It pleased Frederick, although in writing back to Michell he says he knows too well that the moment has not yet come for speaking of a return to intimate friendship.

Ap-
proaches
made to
Frederick
through
the Duke
of Brun-
swick.

The next step was taken through the Duke of Brunswick, who had married one of Frederick's sisters. George II had left England for Hanover on April 28, with the object of providing for the safety of his Electoral dominions during the coming war with France. There was a project of marrying the Prince of Wales (afterwards George III) to one of the Duke's daughters, and in order to present them to the King, the Duchess paid a visit to Herrenhausen at the beginning of July. In the course of conversation the Duchess told Münchhausen, the President of the Hanoverian Council of Ministers, that Frederick had declared to her that he would never allow himself to be drawn into attacking the King's German possessions. Holderness urged on the King the necessity of cultivating any good dispositions by which the King of Prussia might be animated, and reported the matter to Newcastle, who wrote to Münchhausen suggesting that he should pursue the *pourparlers* with Frederick.² Accordingly Münchhausen early in August approached the Duke³ with a written request that either the Duke himself or the Duchess should induce Frederick to declare that in case France attacked, or showed a disposition to attack, King George's dominions in Germany in connexion with the dispute about North America, he would not hinder King George, either directly or indirectly, from taking all possible measures for their defence. This paper having been forwarded by Prince Ferdinand, the Duke's brother,

¹ *Pol. Cor.* xi. 37.

² Waddington, p. 203, based on the Newcastle papers at the British Museum.

³ *Pol. Cor.* xi. 246.

to Frederick, the latter noted on it for the Prince's information, that he might write to the Duke that no one could object to a sovereign taking thought for the security of his dominions.¹ It was well known that the King of England had subsidy treaties with Hesse-Cassel and Gotha, which no one had opposed. Frederick's annotation concluded with a suggestion that the Duke should hint at the desirability of Hanover ceasing to annoy him about Ost-Friesland, and that England should settle the dispute about the Prussian prizes. On the 10th Holdernessee went to the Duke with a repetition of the suggestion made by Münchhausen,² to which he added a request for a formal promise on the part of Frederick that he would not lend any assistance to France in the designs she might be harbouring against King George's German dominions; that he would not oppose any defensive measures George might find himself compelled to take in case of a French invasion of Hanover, and even that he would anticipate and prevent France from undertaking anything of the sort. Holdernessee also hinted that foreign [i. e. Russian] troops might be called in to assist in defending Hanover. To give greater weight to the request, what Holdernessee had said was taken down in writing by one of the Duke's ministers, and read over to him, and in the Duke's presence he declared the record to be correct.

To this Frederick replied on August 12 by two letters, one that might be shown, the other confidential for the Duke's guidance. In the former he remarked of the disputed territory in North America: 'Le jeu ne vaut pas la chandelle. Les possessions que ces deux nations se disputent [dans les terres] incultes de Canada sont un si petit objet que les grands armements qu'on fait surpassent de beaucoup la valeur des pays litigieux' [a remarkable failure of prophetic vision!]. The document concluded by suggesting a recourse to mediation: 'Il est sûr que,

Frederick's first reply.

¹ Ibid. 247.

² Ibid. 251.

si l'on n'y porte un prompt remède il y a toute apparence que la guerre passera en Europe, et qu'elle ne gagne, comme un mal contagieux, de voisin à voisin.

' Vous m'expliquez les appréhensions que vous avez pour l'Allemagne ; quoiqu'elles me paraissent prématurées, je serais fort embarrassé de répondre de l'évènement. Je suis cependant de l'opinion qu'il est encore temps de prévenir toutes les suites fâcheuses que vous semblez prévoir, et cela pourroit se faire en ménageant la dignité des deux couronnes par la médiation de leurs amis communs. La part que vous prenez aux intérêts du roi d'Angleterre, m'oblige de vous ouvrir une idée qui m'est venue dès le commencement de la brouillerie des deux nations, et dont il est libre à vous de faire l'usage que vous trouverez convenable. Il me paraît que, sans commettre l'honneur des deux couronnes, des médiateurs pourraient leur proposer des voies de conciliation et couper par là le mal dans sa racine.

' Je m'offrirais volontiers pour un des médiateurs, le roi d'Angleterre pourrait sonder son alliée, l'Impératrice-Reine, ou la république de Hollande, ou l'Espagne ou le Danemark, et convenir sous main avec une de ces puissances.'

In the other letter he explains that the 'ostensible' letter assumes that he has not had the whole of Holder-ness's conversation communicated to him.¹ The Duke might play the part of a go-between (*entremetteur*), hold out some hopes to the Hanoverians, and even, as a mark of friendly inclination, read to them the other letter, but without giving them a copy. He was quite willing to undertake mediation, if it were desired, but never should they extort from him the desired declaration. It was better for the interests of both the Duke and himself not to leave them without hope, and in case they were not satisfied with mediation, the Duke should advise them not to be discouraged, but to come back to the charge.

¹ *Pol. Cor.* xi. 254.

He adds that he begins to suspect that George is not satisfied with the Court of Vienna, otherwise he would never have applied to himself.

By return of post the Duke sent back this paper, to make sure that it should be seen by no one else.¹ Holder-
 nesse having left Brunswick, he proposes to write to him
 in the sense of the 'ostensible' letter, and to add that if
 he were still on the spot he would have shown him the
 letter itself. Frederick in reply says that he would not
 object to a copy being forwarded to Hanover.² On the
 20th the Duke reported that he had sent Holdernesse
 a copy, and two days later he forwarded an extract from
 Holdernesse's answer. In it Holdernesse said the King
 has observed that the judgement expressed on American
 affairs arises from insufficient information. His first care
 on returning to England will be to prepare a full state-
 ment of the question and of the negotiations between the
 two Courts, and he hopes to be able to prove that the
 matters in dispute are of the greatest importance for the
 welfare of the English colonies. Overt hostilities had
 been commenced by France in 1754, which during the
 whole course of negotiation had not shown any signs of
 a spirit of conciliation, but the points in dispute were
 of such a critical character that the King could not omit
 taking vigorous defensive measures, without compromis-
 ing the rights of the Crown and failing in the protection
 due from him to the most essential branches of the trade
 of his subjects. The King had never wavered in sin-
 cerely desiring a just and equitable arrangement, but all
 his efforts to arrive at it had hitherto been fruitless. It
 would be made clear where the fault lay. In the mean-
 time the King would be glad to know what he might
 expect from Frederick's friendliness, in case, contrary to
 all justice, France were to undertake anything against
 his German dominions, in consequence of an exclusively
 English quarrel.

Holder-
 nesse to
 the Duke.

¹ Ibid. 263.

² Ibid. 264.

Frederick's second reply.

To this Frederick replied in a letter to the Duke,¹ that the sentiments expressed in his answer to the Hanoverian proposals had evidently made some impression, at least the terms employed by Holdernessee were more moderate than he had at first expected. It would be best to wait till King George was back in London, and the promised details were furnished. For himself it was important to gain time, so the Duke should make excuses for the delay of his final answer, such as his occupation with military manœuvres and the journey he would shortly be obliged to undertake into Silesia.

Frederick's indecision, owing to his desire to keep in with France.

Frederick was evidently undecided which side to take, and on the last day of August he sent instructions to von der Hellen, his chargé d'affaires at the Hague, to deny absolutely, if any one questioned him, the report current in Holland that he had come to a secret understanding with George II to remain neutral. The French Government were carrying on negotiations for a treaty of alliance with Saxony,² and he was resolved, if they succeeded, that he would no longer go with them. To this resolution he constantly adhered.³ On September 1 he wrote to the Duke,⁴ to suggest to Holdernessee, as his own idea, that if reasonable proposals were made to him on behalf of King George, the desired object might possibly be attained, though of course he could not enter into any definite engagement before the expiration of his treaty of alliance with France, which would terminate on June 5, 1756.⁵ At the same time he was in no hurry to break with France, and on September 10 he instructed Knyphausen to inform the French Ministry that Admiral Hawke had received orders to attack French squadrons and merchant ships wherever he fell in with them.⁶ A few days later he told him that he might drop a hint

¹ *Pol. Cor.* xi. 272.

² *Ibid.* 282.

³ *Ibid.* 357, letter of October 28 to Knyphausen.

⁴ *Ibid.* 286.

⁵ He changed his mind eventually on this point.

⁶ *Pol. Cor.* xi. 292.

to Rouillé, the French minister for foreign affairs, that rather singular and important overtures had been made to him from the English side. It appears, however, that the English Government was aware of the coldness of his relations with Paris. From the Duke of Brunswick came a letter of September, reporting that Holdernessee having left for England, he had written to him that Frederick was at present unwilling to say anything positive about the neutralization of Hanover, but if acceptable offers were made to him, the proposed object might be attained.

To this Frederick replied from Breslau on the 13th that he was impatient to know how the affair would turn out, in order that he might thereby escape from the difficulties in which he found himself.¹ To von der Hellen he wrote again to deny roundly and boldly any reports that came to his ears of a pretended secret agreement with England.² The passiveness of the French Court with regard to the repeated captures of French vessels excited his contempt. Newcastle, in a letter of October 4 to Hardwicke, says he has got the King's leave for Holdernessee to write to the Duke of Brunswick that negotiations must be pushed in earnest.³ On the 8th the Duke forwarded copies of two letters he had received from Holdernessee, in one of which he enclosed a statement of the English case for Frederick's information, with a map of North America, and begged the Duke to obtain a clearer statement of Frederick's intentions with regard to Hanover. In the other he asked what proposals would be acceptable; if Frederick would openly declare himself favourable to the neutralization of Hanover and the maintenance of peace in Germany, a confidential minister would be chosen for the negotiation, which might be carried on at Berlin under his own eye.

Frederick begins to be impatient.

In response Frederick sketched three successive drafts,

¹ Ibid. 303.

² Ibid. 303.

³ British Museum Add. MS. 35415.

Frederick's third reply through the Duke of Brunswick.

of which he finally adopted the third.¹ It was sent off on October 13, with a confidential covering letter. In the course of the former, after asking under what pretext could he prescribe limits to the measures France might adopt, he added, would she not have a right to say to him : ' We embraced your interests at the time of your differences with England touching the depredations committed against Prussian ships, we assured you of our assistance in case the King of England, in order to support some vague pretensions to Ost-Friesland, were to proceed to a rupture, and now that we are at war with these same English, whom you have not prevented from capturing our ships,² you want to hinder us from employing the means we judge best for defending ourselves.' Proposals, he concluded, must come from the English side. In the confidential letter he alluded again to these two questions, as two big disputes not yet disposed of. However, he begged the Duke to write a private letter to the English Ministry, accompanying a copy of the ' ostensible ' one, holding out hopes, provided they, who had begun the negotiation, were ready to make an offer ; and above all, that they must in the first place remove the old grounds of quarrel.

Instructions to Michell.

Michell having in the meantime assured him that the policy he will adopt is a matter of great concern to the English Ministry,³ Frederick instructed him to hint to them, as an idea of his own, that it was much to be wished that such unimportant differences as those respecting the depredations on Prussian merchant ships could be made up ; he might also try to confirm them in the opinion, which as Michell had reported,⁴ some of them

¹ *Pol. Cor.* xi. 332-5.

² This is perhaps an allusion to the French request that he should undertake the invasion of Hanover, made some months before, which he had refused. *Pol. Cor.* xi. 144, 148 (April and May, 1755).

³ *Pol. Cor.* xi. 338.

⁴ See postscript to a letter of Michell's dated September 19, intercepted and deciphered in London. App. 109.

entertained, that the passage of Russian troops through Germany could not but compel him *bon gré mal gré* to take part in the war.

Michell wrote on October 10 that if the English Ministry could hope to remain quiet in case the war were extended to the Continent, they would take such steps as they thought calculated to ensure such a result, but that they fancied he could not be detached from the French interest.¹ If they saw any possibility of succeeding, he was persuaded they would be glad to open negotiations, provided their general policy were not upset, and that in agreeing to measures that would ensure the safety of Hanover, the King of England did not incur the risk of injuring English interests. To this Frederick replied by asking whether in connexion with the wish that he should remain inactive, there was any chance of the dispute about the Prussian prizes being arranged.

About the middle of November he began to suspect that negotiations were on foot between Austria and France, according to which the former would undertake not to back up England, the latter to abstain from invading the Low Countries.² He was far from divining the whole truth. Things had begun to take shape early in September, when the Austrian ambassador in Paris submitted to the French Court proposals for an alliance between Russia, Austria, Saxony, and other states for the purpose of reducing Prussia to the limits of the electorate of Brandenburg previous to the Thirty Years' War, France to remain neutral in return for advantages in the Low Countries. He was still impatiently awaiting news from England which would enable him to decide whether to renew his alliance with France, or to allow it simply to expire.³ Michell, however, had reported on the 7th that no anxiety for Frederick's neutrality would induce the English Ministry to settle their differences with him in

Negotiations between Austria and France suspected by Frederick.

¹ *Pol. Cor.* xi. 350.

² *Ibid.* 377.

³ Waddington, p. 297.

any other fashion than that reported in the previous year.¹ In Paris there existed some apprehension, as reports had been received from various French diplomatic agents, that he had already entered into engagements with England. He replied to Knyphausen on December 2² that these were malignant insinuations invented by his enemies, that there was not a word of truth in them. He had entered into no engagements with England. He had often given faithful advice to France. Not only had it been neglected, but the fact of his having done it had been allowed to leak out, to his great disadvantage.

English explanations of the subsidy treaty with Russia.

Holdernesse wrote to the Duke of Brunswick, November 21, that the treaty with Russia had no other object than the defence of Hanover, and that the troops stipulated for would not march unless England or Hanover were attacked.³ This letter having been forwarded to Frederick, he replied on December 2, to tell Holdernesse that he [the Duke] could not mention his letters until he had fuller details. Holdernesse on November 26⁴ had given Michell a copy of the treaty with Russia,⁵ together with the secret article, and had offered to do everything possible to compose amicably and on a reasonable basis the differences between the two courts respecting the prizes taken during the last war. This must consist in some expedient for safeguarding (*mettre à l'abri*) the laws and constitutions of the kingdom, and for affording at the same time equitable satisfaction to Frederick. Newcastle had confirmed to him by word of mouth all that Holdernesse had said. Henry Fox⁶ also had affirmed the purely defensive character of the treaty and his own devotion to the King of Prussia.

¹ i.e. on February 15, 1750, namely that Frederick should first release the money sequestrated, on which orders would be given to the Prize Court to inquire summarily into the claims of Prussian subjects.

² *Pol. Cor.* xi. 408.

³ *Ibid.* 413.

⁴ *Ibid.* 418.

⁵ Treaty of September 19, 1755. See F. de Martens, *Recueil des Traités et Conventions*, tom. ix (x), 175, and also p. 144 above.

⁶ Secretary of State for the Southern Department since November 15.

CHAPTER XVI

NEGOTIATIONS FOR THE TREATY OF WESTMINSTER OF JANUARY 16, 1756, AND FINAL ARRANGEMENTS FOR PAYING OFF THE SILESIAN LOAN AND COMPENSATION TO PRUSSIA

THE way being now prepared on both sides, Frederick replied on December 7 with very full instructions to Michell.¹ He might assure the English Ministry of Frederick's appreciation of the confidence shown in him by the communication of the treaty, and that he had received with pleasure the proposals they had commissioned Michell to transmit. He added: 'After which, you will say to them verbatim what follows, without changing a single word. That I thought the thing could be done by concluding between the King of England and me a neutrality treaty for Germany during the disputes actually subsisting in Europe, without naming therein the French nor the Russians, in order to avoid offending any one, and to leave me by these precautions in a position to work more efficaciously for the reconciliation of the two nations, belligerent, embroiled, or at variance.

Frederick's final instructions to Michell.

'I accept with pleasure the offer made to you of fresh guarantees for Silesia, though I count sufficiently on the good faith of the King and of the English nation to judge them incapable of repudiating the engagements they entered into by the last treaty of Aix-la-Chapelle.

'As regards the depredations on some Prussian ships, this affair at bottom is a mere "bagatelle", but as it might in time become a stumbling-block, I shall be glad to see it ended. I will lend myself to anything reasonable, and from the moment that there is a serious intention on both sides to put an end to it, I have no doubt that it will succeed to mutual satisfaction; but as I must think of the

¹ *Pol. Cor.* xi. 418.

future as well as of the past, you will tell the ministers that I have reason to hope that they will give orders that the small trade of Prussian merchants, at which they cannot take umbrage, be not troubled during this war, or at least that they state to me what they call contraband, in order that I may warn my merchants beforehand, and by this means avoid everything that might disturb the good understanding between the two nations.

‘ I foresee on the other hand that in order to terminate the negotiation—provided that in England the minister is satisfied with what I commission you by this dispatch to tell him—it will be necessary to push promptly the dispatch of ministers to finish the negotiation ; I will also think about it on my side, and I only await your answer to make up my mind on this point.

‘ FEDERIC.’

Frederick begins to disclose his plans to his diplomatic agents.

Frederick now began to prepare the way for letting Knyphausen know that he had been driven by French incapacity to look elsewhere for safety. He hinted to Klinggräff¹ that events were likely to occur that would make the Austrian ministers pull a long face. To his envoy at Copenhagen he wrote that there was no occasion for eagerness in denying reports that he is indisposed to declare himself on the side of France, for, after all, his ties to that Power are purely defensive, and concern only the European possessions of both parties. In fact, it was with difficulty that he concealed his satisfaction, and was at every moment on the point of divulging its cause to his agents. Podewils was informed that ‘ *alle gute Hoffnung anscheine, dass Sr. Königl. Majestät Projet, wovon Dieselbe mit Ew. Excellenz im Vertrauen und en secret gesprochen, vielleicht noch reussiren dürfte* ’.² On December 23 he wrote quite openly to Knyphausen that England had made overtures to him with the object, as far as he

¹ Envoy Extraordinary and Minister Plenipotentiary at Vienna since November 1750. His mission to London has been narrated in Chapter V.

² *Pol. Cor.* xi. 435.

understood them, of maintaining neutrality in Germany.¹ The French Court seems to have been still under the impression that he could be induced to help them by falling upon Hanover.² There is an intercepted letter from Frederick to Michell of December 23,³ from which his satisfaction with the turn things were taking may be inferred.

Michell probably received the instructions of December 7 about the 14th or 15th. He reported on the 23rd⁴ that he had lost no time in reading them to Holdernesse, Newcastle, and Fox. Newcastle at once said that the King would be very pleased to seize this opportunity of renewing the mutual guarantees⁵ subsisting between the two Powers, to put an end to the differences that had arisen with respect to the Silesian loan payments, and for preserving the peace in Germany at the present crisis. Then, after a week's consultation, Holdernesse invited Michell to a second conference, at which he handed to him a draft convention, based, as he said, on the ideas communicated on Frederick's part, together with a memorandum.⁶ Holdernesse added that it would not be desirable to insert in the convention the necessary provisions relating to the Silesian debt and the compensation for the Prussian prizes, but as soon as Frederick removed the sequestration of the debt he would deliver, on the day when the convention was signed, a secret declaration signed by one or two ministers, engaging to pay Frederick a reasonable sum, payment to be made simultaneously with the balance of the principal and interest of the debt.

Michell's
report of
negotiations
with the
English
Ministry.

¹ *Pol. Cor.* xi. 444.

² *Ibid.* 455. Knyphausen to Frederick, December 19, 1755.

³ *App.* 110.

⁴ *Pol. Cor.* xii. 1.

⁵ The reference is to the treaty of November 14, 1742, signed at Westminster, by which George II and Frederick guaranteed each other's territories, and the declaration of September 19, 1746, by which George II renewed his guarantee of Silesia to Frederick, accepted by the latter October 13, 1746.

⁶ Newcastle wrote to Münchhausen on December 23, acquainting him with the result of the negotiations with Prussia. His reply expressed his joy at the receipt, and a second applauded the draft of the Convention. *App.* 111-13.

These amounts Michell calculated at £45,000 and £12,600 respectively, and he believed he would be able to obtain from £18,000 to £20,000 as compensation for the prizes. Holdernessee had declined to give the declaration asked for by Frederick respecting contraband, as the Court of Admiralty must be guided by the Law of Nations or by treaties. As to the former, since it was subject to diverse interpretations, it could not always serve as a rule, but in order to put Prussian subjects at ease, the King was ready to conclude a commercial treaty on the model of that of 1672 with Sweden.¹ There was indeed another between England and Denmark,² which might appear more advantageous to Frederick, but it was not possible to conclude a similar one, as England had found herself unable to accord to Denmark what the latter claimed under that treaty; and that far from being suitable for regulating commerce and navigation between the two nations, it had been the subject of disputes on many occasions during the last war. In a word, that nothing but a treaty between Prussia and England could serve as a definite rule for the navigation of Prussian subjects in time of war, and if Frederick wished to conclude one, the English Government would enter on the negotiation. Holdernessee had also said that the King and his ministers would be pleased, in case Frederick desired to discuss the draft convention, to do this through Michell, than whom no one would be more acceptable to them. Holdernessee had also handed him a *pro-memoriâ* expressing the readiness of King George to conclude the convention and to remove the existing causes of difference. It was not want of courtesy towards the King of Prussia that prevented the immediate nomination of a qualified minister to the

¹ The treaty of Whitehall of October 21, 1661, seems to be intended. See Jenkinson, i. 166, Art. 13. A commercial treaty in those days usually contained stipulations as to contraband of war and the treatment of enemy goods in neutral ships; often also of neutral goods in enemy ships.

² The treaty of July 11, 1670, is meant.

Court of Berlin, but the necessity of completing the negotiation with promptitude and secrecy.

This was exactly what Frederick desired. He approved the draft, with but one change, viz. the substitution of 'de l'Allemagne' for 'de l'Empire Germanique', and the addition of a separate and secret article excepting the Austrian Netherlands from the contemplated neutralization. He expressly demanded this, in order not to appear in any way to interfere with French designs on the Low Countries.¹ As soon as he should receive news of the signature of the treaty or convention, he would remove the sequestration, and he further instructed Michell that he would accept £20,000 as compensation for the prizes. Orders were given on January 1 for the preparation of Michell's full-powers and instructions, and the greatest secrecy was enjoined.

Draft Convention amended by Frederick.

From a dispatch of January 3 to Knyphausen,² it appears that Frederick desired at the same time to let the French Court know that he might find himself compelled to accept the English proposals, without at all interfering with a possible renewal of his defensive alliance with France, for he affected to know for certain that as soon as France entered Germany for the purpose of attacking Hanover, Austria would invade Silesia with 50,000 men, and send another 50,000 through Saxony against the Mark of Brandenburg, while 60,000 Russians would enter East Prussia.

A hint of what was imminent sent to Paris.

Writing to Michell on January 4³ he said he was anxious to know as soon as possible whether the English ministers would accept his counter-draft, because Nivernois [a special ambassador from France] was expected very shortly at Berlin, and it was essential to know in good time where he stood with England. Secret instructions were dispatched the same day to Michell to make it quite clear to the English Ministry that nothing would induce him to take part in the war; his only object was to ensure

Frederick becomes urgent to conclude.

¹ *Pol. Cor.* xii. 2. Podewils to Eichel. ² *Ibid.* 8. ³ *Ibid.* 13.

the peace of Germany and of his own dominions. If he had wanted war he would never have consented to this treaty. If George II desired to keep it secret, he would offer no objection.

Michell was informed by the British Government¹ that they had acquainted Sir Charles Hanbury Williams with what had been said in Parliament as to the purpose of the subsidy treaty with Russia, and why it had been communicated to Frederick.² The instructions to Williams were conveyed in a dispatch of December 26.³

Signature
of the
Conven-
tion of
West-
minster
and of
the
Declara-
tion of
the same
date.

The convention, with Frederick's amendment and addition, was signed January 16, 1756. Its text will be found in Appendix 115.

Simultaneously was signed a declaration or exchange of Notes relating to the removal of the embargo on the Silesian debt payments, to be *followed* by the payment of £20,000 in extinction of all claims whatsoever of the King of Prussia or of his subjects. The nature of the claims was not specified.⁴ (Text in Appendix 116.)

Seques-
tration of
Silesian
Loan
Fund re-
moved.

Both documents were received at Berlin, January 25.⁵ On the 31st Frederick wrote to Michell to tell the English ministers that the sequestration had been removed, and that he would make the fact publicly known as soon as he received information of the exchange of ratifica-

¹ *Pol. Cor.* xii. 17.

² He had every reason, therefore, to assume that the Russian troops would not enter Germany, still less be employed against himself, seeing that the treaty of Westminster would obviate the necessity of calling on Russia to move troops for the defence of Hanover. He was convinced that Austria would try to recover Silesia if peace were restored between France and England, but he did not anticipate, so sanguine was he, that his treaty with England would convert France from an ally into an enemy, and he felt himself fully a match for Austria alone. He was quite aware that the Russian subsidy treaty had been aimed at him. (*Pol. Cor.* xii. 40.)

³ App. 114.

⁴ It appears that Michell sent to Berlin the copy of the treaty signed by himself, instead of that bearing the signatures of the English plenipotentiaries. That copy is at the Public Record Office. (*Pol. Cor.* xii. 60.) Usually each copy of such documents is signed by the plenipotentiaries of both parties.

⁵ *Pol. Cor.* xii. 64.

tions.¹ He would arrange at once for the remittance of the necessary sum to pay off both principal and interest, against the delivery of the original bonds and a formal receipt for the money. Michell was to propose to the Ministers that the £20,000 promised by way of indemnity to the Prussian merchants should be deducted at Berlin from the amount payable by him, so as to avoid all *éclat*, and the trouble of making counter-remittances. Frederick's ratifications of the Convention and secret article were dispatched the same day.

On February 3 the Grand Chancellor Jariges was instructed that the sequestration was to be taken off; he would receive further instructions as to the payment out of the Hof- und Kammergericht, and in the meantime the 80,000 thalers advanced to Splitgerber against his bill must be repaid according to the terms thereof.

It was not long before the fact of a treaty having been signed between England and Prussia leaked out. Frederick came to hear that it had been reported in the *Gazette de Leyde*,² and gave instructions for an article to be published explaining the objects of the convention and announcing the friendly settlement of the misunderstandings with England respecting the Silesian debt and *matters connected therewith*. It was pointed out to him by Eichel that the English Ministry had urgently requested that the written undertaking on the latter head should be kept secret, in order not to scandalize the English nation. Nevertheless, the article in question, published on February 5 in the Berlin papers,³ expressly mentions the compensation given to Prussian subjects who had suffered losses in the last naval war. Frederick even caused it to be hinted to the French ambassador Nivernois that he might give out that the convention had been entered into with the consent of France.⁴

The
secret
leaks out.

¹ Ibid. 63.

² Of January 27 in a letter from London. App. 117.

³ Reprinted in *Preuss. Staatssch.* ii. 497. ⁴ *Pol. Cor.* xii. 80.

Settle-
ment of
accounts
between
the
parties.

The English Ministry agreed to Frederick's proposal that the £20,000 should be deducted from the amount to be remitted in discharge of the remaining principal and interest; so the English Treasury must have paid this sum to the trustees for the bondholders, in accordance with the vote in Committee of Supply on May 17.¹ From a letter of Frederick's to Boden of April 2² it appears that according to Michell's account the sum then remaining to be remitted to London was £40,887 10s. He says he had instructed the ministers of the foreign department to make up the account in conjunction with Boden, not forgetting to include in the reckoning the value of the bonds he had purchased some years before in London, with interest at seven per cent. There was a further claim of £2,500 (one per cent on the £250,000 loaned to the Emperor Charles VI, provided for in the declaration signed by Count Kinsky on January 7, 1734/5), payable on the complete extinction of the debt. The trustees did not demand the arrears of interest from July 1735 to 1740, of which the Emperor had never paid a penny. They also expressed their willingness that the account for interest should be made up to March 21, instead of up to the month of June inclusive, but on the condition that payment should be completed in a month or six weeks from April 6.³ The £20,000 = 120,000 thalers were distributed among the Prussian claimants proportionably to the sums attributed to them in the list of claims recognized by the Prussian Commission of Inquiry, so that each received rather less than two-thirds of what had been demanded on his behalf.⁴ Frederick consented to pay the £2,500 demanded under the heading of commission.⁵ He also gave orders to pay £787 10s. to make up the full interest to June 21. Payment was completed on June 20, and a receipt dated June 23 delivered on behalf of the creditors.⁶

¹ See below, p. 199.

² *Ibid.* 271.

³ *Ibid.* 353 and 362.

⁴ *Pol. Cor.* xii. 233.

⁵ *Ibid.* 349.

⁶ *Ibid.* xiii. 33.

The treaty with Prussia and the declaration signed simultaneously were laid before both Houses of Parliament on May 11, 1756, with a message from the King. The House of Commons referred the papers to the Committee of Supply, and on May 17 voted £20,000 for making good his Majesty's engagements to the King of Prussia.¹

Treaty and Declaration laid before Parliament.

CONCLUSION

The settlement was no doubt satisfactory to both parties. Frederick did not obtain the whole amount he had claimed by way of indemnity for the Prussian merchants, but whereas he had at one moment expressed his willingness to be satisfied with 80,000 thalers he received the equivalent of 120,000 thalers. To the English Ministry, as the form of declaration exchanged with Michell did not mention the grounds on which payment was held to be due, the expenditure of so trifling a sum must have seemed a very insignificant price for an alliance which it was expected would protect the King's German dominions from invasion. Moreover, by signing this treaty they stood to save £500,000 a year which they would have had to pay for the Russian auxiliary force, if it had been required to assist in repelling an attack from Frederick. They sacrificed no principle of International Law as they conceived it, and their reply to the Prussian arguments had been left without a rejoinder. It is probable that they considered the promises given by Carteret in respect of Prussian ships and cargoes, somewhat without reflection and in ignorance of the practice of English prize-courts, to constitute a debt of honour which they could not ultimately evade. If so, they certainly took a right view. The word of a minister for foreign affairs given to the diplomatic agent of a friendly Power is binding in honour on the Government and the nation which he represents.

Reasons for mutual satisfaction.

¹ *Parl. Hist.* xv. col. 703.

APPENDICES

I. LICENCE TO COUNT KINSKY

(*S. P. For., Foreign Ministers in England, vol. 49*)

GEORGE R.

George the Second, by the Grace of God, King of Great Britain France & Ireland Defender of the Faith &c^s. To all to whom these Presents shall come Greeting, Whereas Our good Brother the *Emperor of Germany* hath represented to Us, that He hath Occasion to borrow the Sum of Three hundred Thousand Pounds and hath therefore given Authority and Instructions to Count Kinsky His Ambassador to propose the borrowing the Same of Any of Our Loving Subjects, within this Our Kingdom, who shall be willing to lend the same at such Interest on such Security and such Terms, as shall be agreed on between them, And hath for that purpose desired Us, to grant Our Royal Licence and Authority to borrow and receive the said Sum of Three hundred Thousand Pounds, of and from such of Our Loving Subjects as shall be disposed to lend the same.

Wherefore at the Request of Our said good Brother We do by these Presents give and grant Our Royal Licence and Authority to the said Count Kinsky in the Name, and for the Use of Our said good Brother, to borrow and receive, and to all Our Loving Subjects within This Our Kingdom who shall be so inclined to lend, advance and pay to the said Count Kinsky, or such other Person or Persons as shall be duly authoris'd by him to receive the same to & for the Use and on the behalf of Our said good Brother the Emperor of Germany any Sum or Sums of Money not exceeding y^e Sum of Three hundred thousand Pounds, in the whole upon such Security at such rate of Interest and upon such other Terms, Conditions, and Agreements as shall be stipulated and agreed upon between the said Count Kinsky for and on behalf of Our said good Brother the Emperor of Germany and Our said Loving Subjects.

Given at Our Court at Kensington the 6th Day of Aug^t. 1734, in the Eighth Year of Our Reign.

By His Majesty's Command

HARRINGTON.

[*Endorsed*] Copy of a Licence for a Loan to the Emperor Aug^t. 6th 1734.

2. A STATE OF THE CASE OF THE PROPRIETORS OF THE SILESIA LOAN

(S. P. For., *Foreign Ministers in England*, vol. 48)

The late Emperor of Germany gave a Commission to Count Kinsky dated the 28th July 1734 to borrow £250,000.—of the Subjects of Great Britain upon a Mortgage of the Emperors Revenues in the Dutchy of Silesia & also the said Emperors Bond together with the Security of the States of Silesia for the repayment thereof.

By his Majesty's Licence the Subjects of Great Britain on the Credit of the aforesaid Securities did on or about the 10th Day of January 1734 Subscribe at the Bank of England the said Sum of £250,000.—which Sum was afterwards paid to Count Kinsky for the use of the Emperor of Germany & thereupon the said Count Kinsky did deliver to the Hon^{ble} Horatio Townshend Esq^r: Sr. Theodore Janssen, Sr. Jn^o. Heathcote, Sam^l. Holden, & Tho^s. Gibson Esq^{rs}: as Trustees for the said Subscribers the Securitys for repayment of the said £250,000.—to be made to them the said Trustees in the Bank of England with Interest after the Rate of £7 p C^t p Annum in manner following.

The first Payment of the Interest to be made at the end of Six Calendar Months from the Day on which the Subscription should begin to be taken which was the 10th Jan^y 1734 and so to be paid at the end of every Six Months successively 'till the said Principal Sum was wholly repaid & discharged And that on the 10th January of the Years 1740, 1741 & 1742 £10 p C^t of the whole Principal Sum Subscribed should be each Year repaid to the Creditors & on the 10th January of the Years 1743 & 1744 each Year £20 p C^t more, & on the 10th Jan^y 1745 £30 p C^t more in full of the said Principal Sum.

That by the Treaty of Peace concluded at Breslau between the Queen of Hungary & the King of Prussia his Prussian Majesty did engage to pay to the Proprietors of the Silesia Loan all that was due & owing to them for Principal & Interest conformable to the Covenants of the said Loan, And they have had repeated assurances that the same should be punctually performed (even with the utmost exactness) Nevertheless the Proprietors have not hitherto been repaid any part of their Principal neither have they received any Interest for Nine Years last past so that besides the whole Principal Sum of £250,000.—there is owing £157,000.—for 9 Years Interest due 10th July last making together the Sum of £407,500.—

3. EXTRACT OF THE CONTRACT FOR THE SILESIA
LOAN, DATED JANUARY 7, 1734

(*S. P. For., Foreign Ministers in England, vol. 49*)

That the said [£]250,000, or so much thereof, as shall be subscribed, & paid to the said Ambassador, Count Kinsky, or his Order, for the Use of the said Emperor, shall be secured to be repaid & shall be repaid unto the s^d Horatio Townshend; Sir Theodore Janssen; Sir John Heathcote; Samuel Holden; & Thomas Gibson; or the Survivors, or Survivor, of them, His Executors, or Administrators, for the Use of the Subscribers, their Executors, Administrators, or Assignes, with Interest, at the Rate of Seven Pounds $\frac{3}{4}$ Cent $\frac{3}{4}$ Annum, at the Bank of England, in the City of London, in lawful Money of Great Britain, Free from all Charges, Deductions, & Abatements whatsoever in manner following (that is to say) in the Years 1735, 1736, 1737, 1738, & 1739. the said Interest shall be paid half Yearly, the First half Year's Payment to begin, & to be made at the End of Six Calender Months next after the Day, on which the Subscription shall begin to be taken, & so successively at the End of Every succeeding Six Months. And in the Year 1740, the like Interest shall be paid half Yearly as aforesaid, & with the last Payment of Interest there shall be paid Ten pounds per Cent of the Capital Summe to be subscribed, & paid as aforesaid. And in the Year 1741, the like Interest shall be paid half Yearly for the Ninety pounds per Cent then remaining due of the said Capital Summe to be subscribed & paid as aforesaid & Ten pounds per Cent more of the said First Capital Summe. And in the Year 1742 there shall be paid the like Interest half Yearly for the Eighty pounds per Cent then remaining due of the Capital Summe to be subscribed & paid as aforesaid, & Ten pounds per Cent more of the First Capital Summe. And in the Year 1743, there shall be paid the like Interest half Yearly for the Seventy pounds per Cent then remaining due of the Capital Summe to be subscribed & paid as aforesaid, and Twenty pounds per Cent more of the First Capital Summe. And in the Year 1744 there shall be paid the like Interest half Yearly for the Fifty pounds per Cent then remaining due of the Capital Summe to be subscribed & paid as aforesaid, & Twenty pounds per Cent more of the First Capital Summe. And in the year 1745. there shall be paid the like Interest half Yearly for the Thirty pounds per Cent then remaining due of the Capital Summe to be subscribed & paid as aforesaid, & the remaining Thirty pounds per Cent of the said First Capital Summe without any Delay Demurr Deduction or Abatement whatsoever.

4. HYNDFORD TO HARRINGTON

(S. P. For., Prussia, vol. 51)

Bresslau, November 12, N. S., 1741.

MY LORD

I receiv'd from Presburg a Memorial, dated the Twenty First of October, to be communicated to the King of Prussia, wherein the Queen agrees to, and confirms all that passed on the Ninth of the same Month, at the Conference at Klein Schnellendorff ; and by the Return of my Servant, whom I sent to Presburg, I received a Dispatch from M^r Robinson for your Lord^{sh} together with a Project of a Treaty to be concluded between that Court & His Prussian Maty, but having no Messenger with me I can't venture to send them to your L^{sh}. by the Post.

I communicated them to His Prussian Maty here ; I acquainted Him likewise that I had received the *said Articles* of a Treaty ; He desired me to shew it Him at Berlin, because He had not time to examine it, being extremely busy with his new Subjects.

It is founded and consists almost altogether of the same Articles agreed on by the Act of the 9th (Oct.), only there is added an Article concerning His Prussian Maty's Engagem^{ts} for the Debts on Silesia, pro rata, the maintaining of the Catholick Religion, and Policy of the Country He is now in possession of, and likewise y^t the Treaty when concluded should be immediately made publick. What Answer His Prussian Maty will give to those Articles, I do not know, but I am afraid that He will not agree to the Last, for I am sorry to acquaint your Lord^{sh} that He has sign'd his Accession to the Treaty & Guafanty between Bavaria & Saxony on the 8th Inst.

I sent by Mo^r Sweicheld, as far as Hanover, a Letter for your Lord^{sh}, dated the Twenty Eighth, with a Copy of the projected Accession, and the Secret Article, together with a former Dispatch from M^r Robinson : all which that Gentleman promised to forward to London by a Messenger, and I beg Your Lord^{sh} will let me know if they came safe to hand.

Since my Letter of the 28th by Mo^r Sweicheld I have found means to procure a Copy at length of the Treaty between Bavaria and Saxony, which I gave Your L^{sh} hopes of in that Letter, but till I have a Messenger, or two, I can send nothing ; I hope therefore Your L^{sh}. will put me out of pain by sending one with Instructions how I am to act, in case the K^s of Prussia should desire that the King should become a Party, or enter into any Engagements by this Treaty to be concluded, in case His Prussian Maty is sincere in it, which this last accession of His makes me to begin to doubt of.

I leave this place on the 14th inst. for Berlin where the King of Prussia is expected to arrive as this day, he set out from hence on the 9th but was to make some stay at Glogaw.

Neiss surrendered on the 1st inst^t after a siege of 14 days. The garrison marched out with the accustomed honours, and have now joined M. Neipperg's Army. The Prussian Army in this country is now gone into winter quarters. The King has appointed M. Schwerin Commander in Chief of Upper Silesia and Governor of Neiss and Brieg. The King of Prussia arrived at Bresslau the 4th instant received the homage of the States of Lower Silesia on the 7th and upon that occasion made several promotions.

I send Your Lordship the Cartel betwixt Prussia and Saxony and the two Speeches made on y^e occasion of the receiving the homage of the States in case His Majesty should have a mind to see them.

5. PRELIMINARIES OF BRESLAU, JUNE 11, 1742

(*S. P. For., Foreign Ministers in England, vol. 49*)

Extract of The Preliminary Articles of Peace, between Her Majesty The Queen of Hungary, & Bohemia, & His Majesty The King of Prussia, sign'd at Breslau, June the 11th 1742; & guarantied by His Majesty, on the 24th Day of the same Inst.

Article 7^{me}

Sa Majesté Le Roi de Prusse se charge du seul Payement de la Somme hypothéquée sur La Silesie, aux Marchands Anglois, selon le Contract signé à Londres, le 7^{me} de Janvier 1734/5.

6. TREATY OF BERLIN, JULY 28, 1742

(*S. P. For., Foreign Ministers in England, vol. 49*)

Extract of a Treaty, between The Queen of Hungary, and The King of Prussia, sign'd at Berlin on the 28th of July 1742; and Guaranty'd by His Majesty, on the 10th of March 1743.

Art. 9

Sa Majesté Le Roy de Prusse se charge du Payement des Sommes hypothéquées sur la Silesie aux Sujets d'Angleterre, et de Hollande; Sauf toutefois à Sa dite Majesté d'entrer, quant aux derniers, en Liquidation et Compensation de ces Dettes sur ce qui Lui est dû par La Republique de Hollande.

Pareillement Sa Majesté La Reine d'Hongrie et de Bohême se charge des Sommes hypothéquées sur le dit Païs de Silesie aux Brabaçons.

Art. 14

Les Deux Hautes Parties Contractantes sont déjà convenuës, par le Traité des Preliminaires, signés à Breslau l'onzième du Mois de Juin, ainsi qu'Elles conviennent encore par le present Traité de Paix, d'y comprendre Sa Majesté Le Roy de la Grande Bretagne, tant en cette Qualité, qu'en celle d'Electeur d'Hanovre ; S. M. de Toutes les Russies ; S. M. Le Roy de Danemarck ; S. M. Le Roy de Pologne, en Qualité d'Electeur de Saxe, sous la Condition stipulée dans l'Article onzième du Traité des Preliminaires ; Les Etats Generaux des Provinces Unies des Païs Bas ; et La Serenissime Maison de Wolfenbuttle.

7. EXTRACT OF THE KING OF PRUSSIA'S RATIFICATION
OF THE ABOVE ARTICLE

(*S. P. For., Treaty Papers, vol. 60*)

Nous promettons aussi sur nôtre Parole Royale, pour nous, Nos Heritiers et Successeurs, d'executer ponctuellement et au plutot l'Article Neufvième du Traité susmentionné de Berlin, par lequel Nous Nous sommes chargés du Payement des Sommes hypothéquées aux Sujets de la Grande Bretagne sur la Silesie.

8. FREDERICK'S ACCEPTANCE OF GEORGE II'S GUARANTEE,
OCTOBER 13, 1746

(*S. P. For., Foreign Ministers in England, vol. 49*)

Nous Frederic par la Grace de Dieu, Roi de Prusse, Margrave de Brandebourg, Archi-Chambellan et Prince Electeur du Saint Empire Romain, Souverain Duc de Silesie, Souverain Prince d'Orange, Neuf-Chatel et Valengin, comme aussi de la Comté de Glatz, Duc de Gueldre ; de Magdebourg, Cleves, Juliers, Bergue, Stettin, Pomeranie, des Cassubes et Vandales, de Mecklenbourg, comme aussi de Crosne, Bourggrave de Nurnberg, Prince de Halberstadt, de Minde, Camin, Vandalie, Suerin, de Ratzebourg, Ostfrise, et Meurs, Comte de Hohenzollern, de Ruppin, de la Marc, de Ravensberg, Hohenstein, Secklenbourg, Suerin, Lingue, Bure et Leerdam ; Seigneur de Ravenstein, de Rostock, Stargard, Laebourg, Butau, Arlaj et Breda.

Savoir Faisons à tous et à chacun, qui les presentes verront,

que Sa Majesté Britannique nous aiant donné pour la tranquille Possession des Etats, qui Nous ont été cedés par Sa Majesté L'Imperatrice Reine, d'Hongrie et de Boheme, en vertu des Articles preliminaires de Breslau, et du Traité definitif de Berlin, confirmé par celui de Dresde, l'Acte de Garantie, dont la Teneur s'en suit.

Nous George Second, par la Grace de Dieu, Roi de la Grande Bretagne, de France et d'Irlande, Defenseur de la Foi &c^a. Duc de Brunswick et de Lunebourg, Archi-Tresorier et Prince Electeur du Saint Empire Romain, Savoir faisons à tous, et à Chacun, qui ces presentes verront, que comme par les Articles preliminaires, signés à Breslau, le 11^{me} Jour du Mois de Juin, de l'an 1742, entre Sa Majesté la Reine de Hongrie et de Boheme, à present Imperatrice de l'Allemagne, et Sa Majesté le Roi de Prusse, Sa dite Majesté Imperiale ceda à perpetuité au dit Roi de Prusse, Ses Heritiers et Successeurs, le Duché de Silesie, avec la Comté de Glatz, et comme la dite Cession fût pleinement renouvelée confirmée et ratifié en faveur du dit Roi par le Traité definitif de Paix entre les mêmes Hautes parties, conclu et signé à Berlin le 28 de Juillet de la même année: Desquels Articles preliminaires et Traité definitif de Paix Nous garantimes l'Execution à Leurs dites Majestés par des Actes Authentiques, signés de Nôtre Main, et scellés de Notre Grand Sceau de la Grande Bretagne, dont le premier a été expedié dans Notre Palais de Kensington le 24 Juin de l'an 1742, et le second par le Traité d'Alliance de Westmünster, signé le 18 Novembre 1742. Mais de nouvelles Mesintelligences, et une Guerre ouverte etant malheureusement survenus entre Sa Dite Majesté l'Imperatrice et Sa Majesté le Roi de Prusse, Nous Nous engageames pour porter Sa dite Majesté le Roi de Prusse d'en venir d'autant plutôt à une Pacification avec Sa Majesté Imperiale par une Convention signée le 26 d'Août de l'année 1745 à Hanovre, et par Nôtre Ratification, d'icelle, de renouveler à Sa dite Majesté Nôtre Garantie tant du Duché de Silesie, que de la Comté de Glatz; Et comme après cela ensuite de Nôtre Mediation, la Paix fut heureusement concluë, et l'ancienne amitié retablie entre Leurs Majestés susdites par le Traité de Dresde du 25 Decembre dernier, moyennant le Renouvellement des Cessions susmentionnées de la part de l'Imperatrice, et les Garanties reciproques y contenuës, Et Sa Majesté Prussienne Nous ayant requis et recherché tres instamment de vouloir maintenant remplir l'Engagement susdit de la Convention de Hannovre, en lui renouvelant la Garantie, que nous Lui avons accordée ci-devant du Duché de Silesie et de la Comté de Glatz. Nous avons bien voulu y acquiescer, pour consolider autant qu'il pourra dependre de Nous la Pacification si heureusement

concluë, et pour donner à Nôtre dit bon Frere, le Roi de Prusse, une nouvelle preuve de Nôtre amitié sincere et inviariable, Nous en vertu des presentes renouvelions, confirmions et ratifions de nouveau à Sa dite Majesté Prussienne Nôtre Garantie de la Silesie et de la Comté de Glatz, promettant et Nous obligeants pour nous et pour Nos Heritiers, et Successeurs à la Couronne de la Grande Bretagne, tant pour le present, que pour tous les tems à venir, de tenir la Main, et d'employer efficacement tout ce qui est dans Nôtre pouvoir, pour que Sa Majesté le Roi de Prusse, Ses Heritiers, et Successeurs restent dans la tranquille et paisible possession de la Silesie et de la Comté de Glatz, et qu'ils y soyent maintenus contre tous ceux qui voudroient les y troubler en maniere quelconque. Nous travaillerons de plus incessamment aupres des Seigneurs les Etats Generaux des Provinces Unies, et Nous leur ferons les Instances les plus fortes, pour les engager à Se charger de la même Garantie en faveur de Sa Majesté le Roi de Prusse, et à Lui en donner et delivrer un pareil Acte. En foi de quoi Nous avons signé cet Acte de Nôtre main Royale, et y avons fait apposer Notre Grandsceau de la Grande Bretagne. Fait dans Nôtre Palais de Kensington le dix neuvieme jour de Septembre l'an de grace Mil Sept Cent Quarante Six, et de Nôtre Regne le Vingtième.

Signé

GEORGE R.

Nous acceptons avec gratitude le susdit Acte de Garantie, et promettons reciproquement sur Nôtre Parole Royale, pour Nous et Nos Heritiers et Successeurs, de remplir fidelement la Garantie, que nous avons accordée à Sa Majesté l'Imperatrice Reine d'Hongrie et de Boheme, en vertu du Traité de Paix d'amitié et de Reconciliation, conclu à Dresde, le 25 Decembre dernier, avec Sa dite Majesté, pour Ses Etats situés en Allemagne, au cas qu'ils fussent attaqués, et de satisfaire avec la même fidelité aux Traités d'amitié de Defense mutuelle et de Garantie contractés avec Sa Majesté Britannique, tant comme Roy de la Grande Bretagne, que comme Electeur de Brunsvic et Lunebourg, et notamment de celui de Westmünster de l'année 1742. à condition toutes fois, que Sa Majesté l'Imperatrice Reine d'Hongrie et de Boheme, et Sa Majesté Britannique (Chacune pour ce qui la regarde, et de maniere que le manquement de l'une ne sera pas imputé à l'autre) executent aussi fidelement de Leurs cotés les Engagements, où Elles sont entrées avec Nous, et particulierement les Garanties de Nos possessions, qu'Elles nous ont cy-devant données, et qu'Elles Nous fassent jouir de leur plein et entier Effet, toutes les fois que Nous Nous trouverons dans le cas de les reclamer.

Nous promettons aussi sur Nôtre Parole Royale, pour Nous, Nos Heritiers, et Successeurs, d'executer ponctuellement, et au plus tôt l'Article Neuvieme du Traité Susmentionné de Berlin, par lequel Nous Nous sommes chargés du Payement des Sommes hypothéquées aux Sujets de la Grande Bretagne sur la Silesie. En foi de quoi Nous avons signé ce present acte d'Acceptation et y avons fait apposer Notre Scoee Royal. Fait à Berlin, ce 13^e Octobre 1746.

FEDERIC, R.

L. S.

H. C. PODEWILS.

C. W. BORCKE.

9. MICHELL TO CHESTERFIELD, DECEMBER 28/JANUARY 8,
1747/8

(*S. P. For., Foreign Ministers in England*, vol. 48)

MILORD,

Après les assurances et les declarations verbales que le Ministère de Sa Majesté Britannique avoit données au commencement de la presente Guerre au Roy de Prusse Mon Maitre, Sa Majesté avoit esperer que Son Pavillon auroit été respecté, et qu'elle ne se seroit pas vuë dans la necessité de faire d'autres demarches à cet effet, tant que les Navires de Ses Sujets n'auroient été chargez que de Marchandises permises suivant les Traitez de Marine : Mais malgré ces declarations si Souvent reïterées, et quoy que Ses Sujets ne se soyent jamais écartéz des regles du Commerce licite aux Nations Neutres, La marine Angloise n'a pas laissé que de s'emparer injustement des Navires Prussiens, dont il y en a encore plusieurs de retenus dans les Ports de ce Royaume. C'est pour obvier à ces Inconveniens, pour brider la Licence des Armateurs, et pour les empêcher de faire des avanies aux Sujets d'une Puissance Neutre, Que Sa Majesté m'a ordonné de faire des remontrances convenables à Vostre Excellence pour, Qûil soit enjoint sous des peines severes aux Commandants des Batimens Anglois Armez en guerre, de respecter son Pavillon, de laisser la Navigation libre aux Vaisseaux de Ses Sujets, sans les troubler ou les molester sous pretexte de visite : Mais de se contenter de la simple exhibition des Passeports et des autres Escritures que les coutumes de Mer autorisent les Capitaines de Vaisseaux de Guerre et les Armateurs de se faire montrer. Que de plus pour mieux rassurer les Sujets commercants du Roy, contre les craintes que l'experience du

passé doit naturellement leur inspirer, Il plaise à Sa Majesté le Roy de la Grande Bretagne, de déclarer par Ecrit et d'une manière formelle, Que Son Intention n'est point d'empêcher ni d'interrompre le Cours de la Navigation des Sujets Prussiens aux Ports de France et d'Espagne ; Mais qu'il leur sera permis d'y faire et continuer leur commerce sur le même pied que le Droit des Gens, et les Coutumes de Mer, autorisent les Nations Neutres de l'exercer : Que par conséquent pour constater l'Etat de leur Cargaison, on observe exactement la distinction des Marchandises, établie par les Articles 19 et 20* du Traité

* Treaty of Navigation and Commerce between Great Britain and France of ^{31 March,}_{11 April,} 1713.

Art. 17. Magnæ Britanniae Reginae et Regis Christianissimi Subditis omnibus et singulis licitum erit, cum suis Navibus, omni cum libertate et securitate, nullâ distinctione habitâ, quinam Mercium in iisdem oneratarum Proprietarij sint, navigare à quocunque Portu ad loca eorum quibus inimicitia aliqua cum Magnæ Britanniae Regina aut Rege Christianissimo jam, aut dehinc intercedet ; Licitum itidem erit Subditis et Incolis prædictis, cum præfatis navibus et mercibus navigare, et negotiari eâdem cum libertate et Securitate à locis, Portubus, et Stationibus eorum, qui utriusque, vel alterius partis hostes sint, absque contradictione et perturbatione qualicunque, non tantum directè ab illis præmemoratis Locis hostilibus ad Locum Neutrale, verum etiam ab uno Loco hostili ad Locum hostilem alium, sive illi sub Jurisdictione ejusdem Principis sint, sive sub diversis. Et sicut jam circa Navigia et Merces stipulatum est, ut Naves liberâ Libertatem quoque mercibus vindicent, atque pro immuni ac libero habeatur omne id, quod Navibus ad Subditos alterius Fœderati spectantibus immissum deprehendatur, etiamsi totum oneris, vel ejusdem pars aliqua, ad hostes utriusve Majestatis pertinuerit, exceptis semper Mercibus contrabandis, quibus interceptis, omnia ad Articulorum subsequentium mentem fiant ; Ita conventum pariter est, eandem Libertatem ad Personas quoque extendi debere, quæ Navi liberâ vehuntur, eo cum effectu, ut quamvis utriusque partis, aut alterutrius hostes sint, ex navi istâ liberâ non extrahantur, nisi milites sint, & hostibus effectivè Ministeria sua præstant.

Art. 18. Illa navigandi et commercandi Libertas ad omnia Mercimoniorum genera se extendet, exceptis solum ijs quæ Articulo proximo sequuntur, et Contrabandæ nomine indigitantur.

[The English view of the effect of these articles is that the principle of Free Ships Free Goods applies in virtue of them to the case of one of the parties being belligerent, while the other is neutral, and that as if England were at war her antagonist was almost certain to be France, they would generally have no effect. It was not held that they amounted to a recognition of Free Ships Free Goods being applicable in general.]

Art. 19. Sub isto nomine Contrabandæ, seu Mercimoniorum prohibitorum comprehendantur, Arma, Sclopetâ, aut Tormenta majora, Bombardæ cum suis Ignariis et aliis ad ea pertinentibus, Ignes missiles, Pulvis tormentarius, Fomites, Globi, Cuspides, Enses, Lanceæ, Hastæ, Bipennes, Tubi Catapultarij (vulgò Mortarij) Inductiles Sclopi, (vulgò Petardæ) Glandes ignarij missiles (vulgò Grenadæ) Salpetræ, Sclopetâ, Globuli, seu Pilæ quæ Sclopetis jaculantur, Cassides, Galeæ, Thoraces, Loricæ (vulgò Cuirasse) et similia armorum Genera, ad instruendos milites comparata, Sclopotheçæ, Balthei, Equi cum eorum apparatu, & quæcunque alia Instrumenta Bellica.

de Commerce conclû au Mois d'Avril 1713 entre l'Angleterre et la France, et par les Articles 15, 16, et 17 * du Traitté de Commerce de 1739 entre la France et la Hollande, et que l'on ne repute pour Marchandises de Contrebande, que celles qui sont expressement declarées telles, par les Articles susmentionnez. De sorte qu'aussy tôt que les Capitaines et Maitres de Vaisseaux portant le Pavillon de Sa Majesté, et munis de Ses Passeports, feront voir par leurs Ecritures qui ne sont point Chargéz de Marchandises de cette espece, Ils puissent continuer leur route sans empêchement quelconque, Sans qu'on les force à s'en detourner, ou qu'on les amene aux Ports d'Angleterre,

Art. 20. Inter Bona prohibita nequaquam censebuntur hæc quæ Sequuntur Mercimonia, omnes Scilicet Pannorum Species, omnesque aliæ manufacturæ textæ ex quâcunque Lanâ, Lino, Serico, Gospio, vel aliâ quâcunque materiâ, omnium Vestium et Indumentorum Genera, unâ cum Speciebus ex quibus confici solent, aurum et argentum, tam signatum quam non signatum, Stannum, Ferrum, Plumbum, Cuprum, Orichalcum, Carbones focarij, Triticum etiam & Hordeum, et aliud quodcunque Frumenti, et Leguminis genus, Herba Nicosiana (vulgo Tobacco,) nec non omne genus Aromatum, Carnes salitæ & fumo duratæ, Pisces saliti, Caseus et Butyrum, Cerevisiæ, Olea, Vina, Sacchara, et omne genus Salis, nec non omnis generatim Annona, quæ ad victum hominum, et vitæ sustentationem facit, Gossipij porrò, Cannabis, Lini, Picis tam liquidæ quàm aridæ omne genus, Funes, Rudentes, Vela, Linteamen velis nauticis aptum, Anchoræ, & Anchorarum partes quælibet, Mali item navales, ut et asseres, Tabulæ, et Trabes ex quibuscunque arboribus, omniaque alia ad Naves seu construendas seu reficiendas comparata, sed nec aliæ quæcunque merces quæ Instrumenti vel apparatus alicujus pro terrestri, vel maritimo bello formam non acceperunt, pro Contrabandis habebuntur, multò minus quæ ad alium quemvis usum jam apparatus & conformatæ sunt; quæ omnia planè inter Mercimonia libera censebuntur, juxta ac aliæ quælibet Merces et res, quæ in Articulo proximè præcedenti non comprehenduntur, ac speciatim designantur, ita ut à Subditis utriusque Confœderati liberrimè transportari et invehì possint, etiam ad Loca inimica, exceptis duntaxat Oppidis locisve tunc temporis obsidione cinctis, circumseptis, vel investitis. (From the original treaty at the Public Record Office.)

* Extract from the Treaty of Commerce and Navigation of December 12, 1739, signed at Versailles between France and the Netherlands.

15. Ce transport et ce trafic s'étendront à toutes sortes de marchandises, à l'exception de celles de contrebande.

16. En ce genre de marchandises de contrebande, seront seulement comprises toutes sortes d'armes à feu, et autres assortimens d'icelles, comme canons, mousquets, mortiers, pétards, bombes, grenades, saucisses, cercles poissés, affûts, fourchettes, bandoulières, poudre, mèches, salpêtre, balles, piques, épés, morions, casques, cuirasses, hallebardes, javelines, chevaux, selles de cheval, fourreaux de pistolets, baudriers et autres assortimens servant aux usages de la guerre.

17. Ne seront compris dans ce genre de marchandises de contrebande, les fromens, blés et autres grains, légumes, huiles, vins, sels et généralement tout ce qui appartient à la nourriture et sustentation de la vie, mais demeureront libres, comme les autres marchandises et denrées non comprises dans l'article précédent, et le transport en sera permis, même aux lieux ennemis desdits Seigneurs États-Généraux, excepté aux villes et places assiégées, bloquées ou investies.

ni qu'on les oblige d'y relâcher sous pretexte de Visitte ulterieure ou autre de cette nature.

Comme ce que je viens de représenter à Vostre Excellence de la part du Roy Mon Maître, est exactement conforme au Droit des Gens et aux Privileges dont les Sujets des Nations Neutres et amies doivent jouir, Sa Majesté s'attend que la Grande Bretagne ne Luy refusera pas une Declaration par escrit fondée sur des motifs aussy justes, que le sont ceux qui se trouvent détailléz cy dessus ; Et qu'en outre on remediera promptement aux justes plaintes des Sujets de Sa Majesté contre les avanies qui leur ont été faites par la Marine d'Angleterre, en leur procurant une satisfaction equitable pour les pertes, fraix, et dommages que l'injuste detention ou confiscation de leurs Vaisseaux et effets peut leur avoir causé.

J'ay l'honneur d'être tres respectueusement, etc.

MICHELL.

à Londres le 28^e Decembre, /8^e Janvier 1747/8.

IOA. ANDRIÉ TO FREDERICK, MAI 29/JUIN 9, 1744

(S. P. For., *Foreign Ministers in England*, vol. 48 ; enclosed in Michell's letter of March 24/April 4, 1747/8, to Newcastle)

Copie de la Depêche de Monsieur Andrié Ministre de Prusse du 29 Mai/9 Juin 1744, au Roi son Maître.

J'ai reçu par la Poste d'hier le Rescript de Votre Majesté touchant la liberté de son Pavillon et des Marchandises qui pourroient être envisagées comme de Contrebande pendant la Guerre presente.

Outre ce que J'eus l'honneur de mander à Vôtre Majesté par mon Post Script du 29 du mois dernier sur cette matiere, J'en ai encore parlé ce matin à My Lord Carteret sur le pied contenu dans les ordres ci dessus de Vôtre Majesté, sur quoi ce Secretaire d'Etat m'a encore reiteré et assuré au nom du Roi son Maître que tous les Articles inserés dans les ordres de Vôtre Majesté, *comme Bois et autres materiaux qui servent à la construction des Vaisseaux, Cordage, Voiles, Chanvre, Lin, Gaudron ne sont nullement réputés comme Articles de Contrebande* ; Que tous les Vaisseaux des sujets de Vôtre Majesté et son Pavillon seroient enactement respectés de la part de l'Angleterre, et que l'on n'entendoit point les troubler en quoique ce soit dans leur Commerce, pourvû qu'ils ne fussent pas trouvés portant des Munitions de guerre aux Ennemis de l'Angleterre [*sic*] spécifiées dans tous les Traités entre les Puissances Maritimes, où de Munitions de bouche dans une place qui pourroit être assiégée où bloquée par les Anglois, que dailleurs la Liberté du Com-

merce pour les Puissances Neutres etoit la même et sur le même pied qu'en tems de paix, que c'estoit de cette façon qu'il s'estoit expliqué avec les autres Puissances Neutres Maritimes, comme la Suède et le Dannemarck, et qu'il me le reiteroit encore aujourd'hui en priant Vôte Majesté d'être bien persuadée que l'Intention de l'Angleterre ne seroit Jamais de troubler en quoyque ce soit le Commerce des sujets de Votre Majesté, qu'il espéroit enfin que comme il n'estoit pas d'usage en Angleterre de donner des Declarations par escrit dans des Circonstances pareilles à celles-ci à une Puissance Neutre, Votre Majesté seroit satisfaite de celle qu'il venoit de me faire de bouche au nom du Roi son Maître.

Signé, ANDRIÉ.

10B. MICHELL TO NEWCASTLE, MARCH 24/APRIL 4,
1747/8

(*S. P. For., Foreign Ministers in England*, vol. 48)

MILORD DUC,

J'ay l'honneur de remettre cy joint à Vostre Excellence Les Cas détaillé d'un Vaisseau Chargé par un Sujet du Roi de Prusse mon Maitre, qui a été condamné injustement devant la Cour du *Doctors Commons*, et dont le Propriétaire a appellé de ce jugement devant la Cour Superieure des Seigneurs Commissaires nommez pour decider en dernier ressort les Causes des Prises.

J'ay aussy l'honneur de joindre icy Copie d'une Declaration que Milord Granville a donnée à Mr. Andrie, de la part de Sa Majesté le Roy de la Grande Bretagne, au commencement de la presente guerre avec la France.

C'est en vertu de cette Declaration et du Droit des Gens que les Sujets du Roy mon Maitre ont negocié, et qu'ils se voyent malgré cela interrompus dans leur Commerce et leurs Vaisseaux condamnez. Il y a prés de huit mois que la cause de celuy cy est pendante devant le Conseil des Prises, sans qu'on ait pu encore en avoir la justice à laquelle on doit s'attendre; Ainsy je prie Vostre Excellence de la faire terminer, afin que par là je sois à même d'informer le Roy mon Maitre, de la réalité des assurances qu'on luy a donné depuis si longtems.

J'ay l'honneur d'être tres respectueusement,

Milord Duc,

De vostre Excellence,

Le tres humble et tres

Obeissant Serviteur,

MICHELL.

Londres, le 24^e Mars/4^e Avril 1748.

II. INSTRUCTIONS TO LEGGE, FEBRUARY 12, 1747/8

(F. O., *King's Letters*, vol. 53)

GEORGE R.

Instructions for Our Trusty & Welbeloved Henry Legge Esqr., whom We have appointed to repair to the Court of Our good Brother the King of Prussia, with the Character of Our Envoy Extry & Plenipotry. Given at Our Court at St. James's the Twelfth Day of Febr'y 1747/8 in the Twenty First Year of Our Reign.

1. Upon the Receipt of these Our Instructions, & Our Letters of Credence to the King & Queen of Prussia, & the Queen Mother Our Sister, you are, with all convenient Speed, to repair to Berlin.

2. Being arrived there, you are to demand immediate Audience of the King & Queen of Prussia, & of the Queen Mother, wherein you are to deliver Our said Letters of Credence, & to accompany the same with suitable Compliments in Our Name, & with the strongest Assurances of Our constant Friendship & Regard.

3. In your Audience of the King of Prussia, if it should not be attended with such Ceremonys as may make it, at that Time, improper, you are not to confine your self to the above general Declarations of Our Friendship & Regard towards Him, but to open to Him Our particular Views in charging You with this weighty & important Commission; But if it should, Our Pleasure then is, that You do desire, as soon as possible, to see the King of Prussia in private, & being accordingly admitted to Him, you will acquaint Him, that from Our sincere Desire of giving Him all possible Proofs of Our true Affection towards Him, We have sent you immediately from Our Presence, fully instructed with Our Sentiments & Dispositions upon the critical & delicate Situation of publick Affairs; And that as We have nothing more sincerely at heart than to cultivate the most perfect & intimate Union with Him for the reciprocal Advantage of Our Two Royal Familys, & for the general Good of Europe, & That of the Protestant Cause in particular, so We are desirous to enter with Him into the closest Concert of Measures, for the obtaining the desirable Ends abovementioned.

4. You shall diligently observe the Motions of that Court, & endeavour to penetrate their real Views & Designs, from Time to Time, for Our Information; & you shall particularly study the King of Prussia's Genius & Inclinations, & endeavour to make your self as agreeable to Him, as possible,

as well as to those Persons, whom you shall observe to be in His Confidence.

5. Whereas the King of Prussia, by the Ninth Article of the Treaty of Berlin, & by an Act likewise of His Acceptation of Our Guaranty to Him of the Dutchy of Silesia, & County of Glatz, dated at Berlin the 13th Day of October 1746; did promise & engage to repay punctually, & as soon as possible, several Sums of Money advanced by Our Subjects upon the Silesian Loan; You will take all proper Occasions of recommending, & insisting in Our Name, with that Prince & His Ministers, upon the due & faithfull Performance of that Engagement, as a Matter, in which the Interests of Our Subjects are so nearly & essentially concerned, & which, for that Reason, We have most seriously, & extremely, at heart.

6. You shall carefully maintain a good Correspondence with the Ministers of other Princes & States, Our Friends & Allies, residing at the Prussian Court; & use your best Skill & Endeavours to penetrate into the Councils & Aims of their respective Masters, & the Measures they take, both with respect to their own Affairs, & Those of their Neighbours, & of all you shall be able to discover, You shall send Us a constant Account, by One of Our Principal Secretarys of State.

7. Whereas Our Royal Predecessor King Charles the Second, did, by his Order in Council, bearing Date the 26th Day of August 1668 direct, that his Ambassadors should not, for the future, give the Hand, in their own Houses, to Envoys, in pursuance to what is practised by the Ambassadors of other Princes, & did therefore think it reasonable, that His Envoys should not pretend to be treated differently from the Treatment He had directed His Ambassadors to give to the Envoys of other Princes; We do accordingly, in pursuance of the said Order of Council, hereby direct you, not to insist to have the Hand from any Ambassador, in his own House, who may happen to be in the Court where you reside.

8. You shall countenance & protect Our Subjects trading to the Dominions of the King of Prussia, & endeavour to procure good & speedy Justice, & all reasonable Favour to all such, who have any Suits or Pretensions depending there; Yet, for Our Honour & your own Credit, you must not engage yourself in every Complaint, that may raise Clamour without a justifiable Cause, or due & legal Proofs; but only in such as may deserve the Interposition of Our Name for the Relief of Our Subjects, & the Maintaining them in their undoubted Rights & Property.

9. Whereas a Representation from Our Com^{rs}. of Trade, dated the 1st of April 1715. has been laid before Us, proposing

a Method to be set on foot, for giving regular Accounts of the State of the Commerce of Our Subjects in Foreign Parts, & of the Increase & Decrease of the same, We having approved of the said Proposal, have ordered it to be put into your hands; And Our Will and Pleasure is, that, pursuant thereto, you do use your best Care & Diligence, that Accounts of Trade be transmitted from time to time, from such Factorys of British Merchants as are settled in any Parts of the King of Prussia's Dominions.

10. You shall correspond with the Ministers, whom We employ in the Courts of Foreign Princes, both for your mutual Information in all Matters, that are transacting, & for assisting each other in such Points, as may be for Our Service in your several Negotiations.

11. At your Return, We shall expect from you a perfect Narrative in Writing, of all Affairs, worthy Our Knowledge, which have happened in the Court, whither you are going to reside, together with your Observations upon the Tempers & Inclinations of the Chief Ministers employed there, the Methods of that King's Government; His Interests & Alliances; as likewise all such other Informations, concerning the Nature, State and Strength of those Dominions, as may most contribute to the Use & Service of Us, & Our Kingdoms.

12. You shall, from time to time observe & follow such farther Instructions & Directions, as you shall receive from Us, or One of Our Principal Secretarys of State, with whom you shall likewise constantly correspond, & give an Account of your Proceedings, & of all material Occurrences, which may happen, during the Course of this your Employment abroad.

G. R.

12. ADDITIONAL AND SECRET INSTRUCTIONS TO THE SAME

(*S. P. For., Prussia, vol. 64*)

GEORGE R.

Additional, and Secret Instructions for Our Trusty, and Welbeloved Henry Legge Esqf.; whom We have appointed to repair to the Court of Our Good Brother, The King of Prussia, with the Character of Our Envoy Extraordinary, & Plenipotentiary. Given at Our Court at St. James's the 12th Day of February, 1747/8, in the Twenty First Year of Our Reign.

That You may be the better enabled to advance the desirable, & salutary Purposes, recommended to You, in the Third Article of Our General Instructions; You will let The King

of Prussia know, That, entirely depending upon the Performance of His Engagements towards Us, We are ready, and willing, to renew Our Several Engagements, with regard to Him ; and to contract Such further Alliances with Him as the present Conjunction of Affairs may render necessary : That We have long seen, with extreme Concern, that any Incidents have hitherto arisen, to obstruct, or weaken, Those Connexions, which the House of Brandenburg formerly had with the Maritime Powers, & the House of Austria, it's ancient, & natural Allies ; and that France has been able to improve Those Incidents, for the Advancement of it's own particular Views, under the specious, but false Pretext, of securing to The King of Prussia at the General Pacification, the Countries, yielded to Him by the Treaty of Dresden ; As if That Prince could have no other Security given Him for the quiet, & undisturbed Possession of Those Countries, but what was to depend upon the Will, and good Pleasure, of That Crown : That, to shew Him the insidious Artifices of That Court ; and to convince Him, that there are better, & more solid Foundations, upon which to build His Expectations, in that respect ; And how entirely We have His Interest at Heart, in every Point ; We are not only determined to fulfill Our Own Guaranty of Those Possessions ; but to employ Our Endeavours forthwith, to induce the States General likewise to take upon Themselves the same Engagement ; And We will, as We have already done, (Tho', hitherto, without the wish'd for Success,) further exert Our utmost Efforts, at the Court of Vienna, to prevail with the Empress Queen, to perform her Engagements towards The King of Prussia ; and to give Him all the Satisfaction, which He can reasonably expect, for the Security of the Object in question ; And, particularly, to procure the Guaranty of the Empire ; But that, in all Events, We, together with Our Good Friends, & Allies, The States General of the United Provinces, will maintain, & effectually support His Prussian Majesty, against any Power whatever, in the Safe, & quiet Possession of Those Countries which We have already guarantied to Him, by Our Act of the 10th of Sept^r., 1746, a Copy whereof We have ordered to be delivered to You ; together with That Prince's Act of Acceptation thereof.

Having thus given The King, Our Nephew, the strongest, & most authentick Proofs of Our sincere Disposition to cultivate His Friendship, and promote his Interest ; You will demand of Him a like friendly, and unreserved Communication to Us of His Dispositions, and Intentions ; Desiring, at the same Time, to know, whether He will make a Common Cause with Us, and Our Allies, in order to put an End to the Troubles, which have so long unhappily subsisted in Europe.

And to this End, You will represent to Him, in the most serious, and cordial Manner, the imminent Danger, to which The Republick of the United Provinces is now reduced by the unwarrantable Invasion of It's Dominions, the last Summer, by the French Troops, And Their having possess'd Themselves of Several of It's most important Fortresses ; And that France is now actually meditating to destroy, if possible, the very Existence of That Republick.

You will further add to Him, That, as It cannot escape His Penetration, what fatal Consequences must inevitably follow to the Liberties of Europe, and to the whole Protestant Interest, if the House of Bourbon should be able to accomplish this pernicious Design ; So We are persuaded, that He will not be a Spectator only in so great, and important a Crisis ; But That He will cordially join, and cooperate with Us, to stop the further Progress, and Encroachments, of That restless, and ambitious Crown ; And, in Imitation of His Great Grand Father, (who succoured That Republick in a former Extremity,) aim at acquiring the like Glory, of being consider'd, as the Preserver of the Protestant Religion, and the Liberties of Europe.

But if, notwithstanding the above Assurances, and the Motives, which We have now directed you to suggest to The King of Prussia, in order to influence his future Conduct ; and the further Consideration of the Danger, to which His own Dominions must be exposed, sooner or later, when France shall have destroyed that Equilibre, which has hitherto check'd, & defeated the Success of it's destructive, but favourite System of universal Monarchy ; You shall find That Prince unwilling, and averse to take an active Part in the present War, for the Defence, and Preservation, of the United Provinces ; and for the Security of the other great, & valuable Objects abovementioned ; You will then acquaint Him, That, as We entered into the War upon no other Principle, but the due, and religious Performance of Our Engagements ; and the Defence of the Liberties of Europe against the exorbitant, and insatiable Ambition of France ; So We have been, and are still, desirous to put an End to the Calamities of it, by Our Readiness to receive safe, and honorable Terms of Pacification : And That, accordingly, We make no Doubt, but That The King of Prussia, being thus informed of Our full Intentions for the End abovementioned, will employ His whole Weight, & Credit, with the French Court, not only to deter That Power from attempting any Thing more against the United Provinces ; But to oblige it likewise to think of offering such Terms of Peace, as We, and Our Allies, can accept with Honour. And, if you shall be convinced, That The King of

Prussia is sincerely, and seriously disposed to enter into Such an amicable Connexion with Us, as is above proposed ; And That, upon manifesting Such his Disposition, by the Answers, and Assurances, which You may receive from Him, in Consequence of the Overtures, We have hereby directed You to make ; That Prince should ask You, what Our particular Ideas, & Sentiments are, with regard to the Terms, upon which a General Pacification may be formed ; You will, in That Case, acquaint Him, That We have not yet opened Our Intentions to You thereupon ; But That You believe, (Tho' This You are to mention entirely as from yourself,) That It might be brought about, upon the Foot of a mutual Restitution of Conquests, on all Sides.

Upon Your Arrival at the Hague, You are to communicate Your Instructions to The Prince Stadtholder ; and to the Earl of Sandwich, Our Minister Plenipotentiary ; Representing, at the same Time, to the Former the absolute Necessity of procuring Instructions to be sent to Mo^r. Groensfeldt at Berlin, directing Him to cooperate firmly, & zealously, with You in the Execution of Your Instructions. And you will, particularly, insist, That Mo^r. Groensfeldt shall be authorized to offer to The King of Prussia, The Guaranty of the Republick for Silesia, and Glatz, in the same Manner, as Great Britain has done, by the Treaty concluded between Us, and The King of Prussia, at Hanover, the 1st of August, 1745 ; His Prussian Majesty giving a reciprocal Guaranty to the Republick.

You are to omit no Endeavours to calm, and satisfy any Distrust, which The King of Prussia may have conceived, either in regard to the March, or the Return, of the 30,000 Russians ; by assuring Him, That, in the Conduct of this whole Measure, so great an Attention has been paid to Him ; and the Possibility of giving Him Offence has been so cautiously avoided ; That It has been previously agreed between the Contracting Parties, That Those Troops shall, upon no Account, pass over any Part of His Prussian Majesty's Dominions, in their March to Flanders. And You will further add, That, in case an immediate Pacification should prove the happy Consequence of Their Arrival there, The same Precaution shall be taken, and the same Deference shewn to The King of Prussia, in the Manner of Their returning Home again.

If The King of Prussia should express any Uneasiness at the Second Treaty, concluded with The Empress of Russia ; You will assure Him, That the View, and Object, of That Treaty is the Same with That concluded the last Year, and then communicated to His Minister here.

G. R.

13. LEGGE TO NEWCASTLE

(British Museum Add. MS. 23829, ff. 116-18)

Berlin July 1st, 1748.

MY LORD,

I have great Pleasure in being able to acquaint Your Grace, That, Notwithstanding all the Pains that have been taken here to retain The King of Prussia to the Interest of France, and prevent His Entering into Engagements with Great Britain, He still perseveres in the Sentiments, He professed at first to me ; of which I have received lately a strong, and fresh Declaration.

Before The King left this Place to go to Stetin (of which I acquainted Your Grace in my last Dispatch) He sent for Mo^r. Andrié, and commissioned him to speak to me to the following Effect ; which, to prevent Confusion, I shall endeavour to relate in his own Words, as reported to Me by Mo^r. Andrié.

' Tell Mr. Legge, That He may depend upon it, That I will act sincerely, and confidentially with Him ; That I would see him now, notwithstanding the Shortness of My Stay ; But that Interviews of this Kind cause great Speculation, and can advance Nothing, until He has orders to proceed upon Business : But if, during My Absence, He receives Orders to enter into Particulars here, or Orders to go to Hanover, I will see Him in private at My Return, and open Myself fully to Him ; And, in the mean while, tell Mr. Legge, He may acquaint His Court, That I am ready to enter into a Defensive Alliance with The Maritime Powers, and Great Britain in particular ; and That I will go as far, towards the Support of the Protestant Cause, and the Defence of the Liberties of Europe, as Any of my Family ever have done.

' France cannot endanger Either, or give Umbrage to The Maritime Powers, but by attacking the German Dominions of The House of Austria, or by Making War in the Low Countries, and Invading The Barrier. I am ready to guaranty Both, as They now stand, in the strongest Manner, The Maritime Powers can desire ; And, tho' the House of Austria, and I, have not personal good Will enough towards Each other, to make an Alliance, immediately with Her, agreeable to Me, Yet, If I guaranty Her German Dominions, and engage Myself to make Common Cause, with the Maritime Powers, of Her Defence against France, It is all That She can desire, or that The Maritime Powers can desire in Her Behalf.'

This is (as near as I can recollect) the Substance of what Mo^r. Andrié delivered to Me, by The King's Command.

I must now inform Your Grace, That It is of great Impor-

tance, Mons^r Klingraff should know Nothing of This Declaration ; and the less He knows of The King of Prussia's real Sentiments, except from The King of Prussia Himself, The better. He is a very worthy Man ; but connected with the Minister here, who, I have lately learnt, drew His Instructions. I have not been able to get a Copy of Them ; But I am told, by one, who has seen Them, That They are very extraordinary, to say no worse ; and I know, That, a few Days ago, One of the Ministers, who is most devoted to France, declared, and plumed Himself upon it, That Mo^r. Klingraff was not of Opinion, That The King of Prussia ought to throw Himself into the Arms of the King of Great Britain. This is the Cant, They all use, whenever They apprehend, That Their Master designs to quit Those of France ; and consequently That Their Pensions are in Danger.

From what I have had the Honor to say to Your Grace, It is natural to suppose, That all which Mo^r. Klingraff knows, will soon be known to the Ministers here, who will raise every Obstacle in Their Power to any Union between Great Britain, and Prussia.

Hitherto, They know Nothing of The King of Prussia's Intentions, and have very bad ones of Their own.

The King Himself is desirous to keep Them in Ignorance ; and, for that Purpose, has given me Leave, in all Things of Importance, to come directly to Himself, without any previous Communication to His Ministers ; And I am pretty sure, There is not a Person, to whom He has opened, or will open Himself freely on this Subject, but Mo^r. Andrié, and myself.

Mo^r. Andrié told me, The King of Prussia had mention'd the March of the Russian Troops, as a Matter, in which He did not think Himself concern'd ; But That His Prussian Majesty, from the Advice He had received, as well as from His own Conjectures, imagined, That Their further March might be with a View to intimidate The House of Bavaria, and The Elector Palatine ; and, by that Means, enable The House of Austria to get the young Arch Duke made King of the Romans. All, I said in answer, was, That I had received no such Intelligence ; But whatever the Destination of the Russian Troops was, It could not be governed by the House of Austria, without the Approbation of the Maritime Powers, who paid, and consequently would dispose of Them ; And His Prussian Majesty might be sure, They would not dispose of Them in a Manner to give Him any just Cause of Discontent.

I hear with great Pleasure, That The King of Prussia's present Complexion is greatly suspected, & disapproved at Paris ; where They talk loudly, & without Management, against Him. It is certain, That Mo^r. Valory is to return in

August next to France, I hope, as a Mark of the French King's Resentment, and not in order to be replaced by an able Minister ; or That if such a one comes, It will be too late to do any Mischief.

The King of Prussia, in talking of Mo^r. Valory's Return to France, said to one, who told it me, *Il y aura donc un Caporal de moins dans Mes Royaumes* ; So that I am in Hopes, any Token of Resentment from France towards His Prussian Majesty, will not be thrown away upon Him : It shall not be my Fault, if it loses its proper Effect.

I am &c.

H. LEGGE.

[*Endorsed*] In the D. of Newcastle's Secret Letter of 5/16 July 1748.

14. BEDFORD TO LEGGE

(*S. P. For., Prussia, vol. 64*)

Whitehall 24 June 1748.

Mr. Legge.

SIR,

I received your favour of the 11^d Inst, and in answer to that part of it which relates to the two Cases of Captures made on the King of Prussia's Subjects, I am to acquaint you, that I have received His Majesty's Orders by Mr. Stone, for accelerating Them as much as possible ; But as the Commission signed by His Maty for adding the Judges to the Number of Comm^{rs}. for trying Prize Causes is not yet put in Execution, nor is it certain when it will, as most of the Judges are preparing to go Their Circuits, I can only inform you, that I will, notwithstanding these difficulties forward these Things as soon as possible after the Judges shall be returned from Their Circuits.

I am &c.

BEDFORD.

15. LEGGE TO BEDFORD

(*S. P. For., Prussia, vol. 64*)

Berlin, August 8/19, 1748.

MY LORD,

Before I had receiv'd the honour of Your Grace's letter of 29 July past, the enclosed extracts of letters relating to the Ship *Petit David*, were put into my hands, and which I promised should be transmitted to Your Grace.

As to Your Grace's Letter I shall make the best use of it towards calming the discontents here, and as far as it is a proof,

that Your Grace at least has not left the complaints of His Prussian Majesty's Subjects unattended to, it will certainly have that effect ; tho' the argument it turns upon would not, I am afraid, be much relish'd here.

The very Want of those papers for the defense of the Owners titles which is assign'd to Your Grace by the Court of Admiralty as the sole cause of detaining the Ship, is perhaps the most grievous article of complaint in the whole Transaction.

If Your Grace will permit me, I will state the case as it appears to me from the papers I have seen in relation to it.

One Privateer meets the *Petit David* at Sea, rifles her, abuses the Master, and seizes all papers belonging to the Ship. Another Privateer meets her afterwards, takes Ship and Cargo, and carries her into Leverpoole as good prize. The two Plunderers join together (: upon what motives is too evident :) to prosecute the cause against her, and the one is in a fair way of making good his Claim, because the other has possess'd himself of, and detains in his hands the only means the Ship can possibly have to defeat that Claim. If this should prove to be the case, and no remedy can be had in it, Your Grace plainly sees to what a length Piracy is carried, and that our Privateers would have nothing to do, but by hunting in couples, to make, and in consequence to prove every Ship upon the Ocean a lawfull prize. If we should now reproach the Owners with the want of their Papers, I am afraid they would think we added insult to injury.

I can't help wishing, for y^e honour as well as interest of England, and I am sure Your Grace joins cordially in every wish of that sort, that this affair could be thoroughly and speedily examined to the bottom, and strict justice done in it. That if the affair is as represented, those Privateers may be obliged to make ample satisfaction, and not by complicating one fraud within another protract all proceedings, weary and baffle the owners, and perhaps by a series of Knavery at last create a property for themselves, to their own emolument, and the discredit of Great Britain.

[*Endorsed*] R 19, to be laid before the Lords Justices.

16. BEDFORD TO LEGGE

(*S. P. For., Prussia*, vol. 64)

Whitehall 26th August 1748.

Mr. Legge.

SIR,

Since I rec^d the favour of your Letter of the 8/19 Inst. inclosing Extracts of Letters relating to the Ship *Petit David*, I have seen Mo^r. Michell the Prussian Secretary, who informs

me that the Documents & Proofs which have hitherto suspended the Determination of this Cause, are now arrived, so that I shall immediately recommend it to the Judge of the high Court of Admiralty to appoint this the first Cause to be heard after that Court shall sit again, which will be on the 6th of next Month. I can't conclude without doing Mons^r. Michell the Justice to declare he has Solicited all the Causes recommended to him by his Court, with as much Care & Assiduity as if he had been himself the sole Proprietor of every Ship concerned, nor will I allow the High Court of Admiralty, to be to blame for these Delays, as every Court of Justice ought to proceed according to it's stated Rules & Forms, & Judge from Legal Proofs, & not from the Assertions of either of the Interested Parties.

I am &c^a.

BEDFORD.

17. BEDFORD TO LEGGE

(*S. P. For., Prussia*, vol. 64)

Whitehall, 2^d Sept^r. 1748.

SIR,

The Day before Yesterday, Mons^r. Mitchell, the Prussian Secretary, entered into a Conversation with Me, in relation to the *Dedommagement*, the King of Prussia expects for Those of His Trading Subjects, whose Effects shall have been condemned by the different Courts of Admiralty, as legal Prizes, to the Captors, in Derogation of the verbal Declaration, which had been made, at the Breaking out of the War, to Mor. Andrié, by the Earl of Granville, then Secretary of State, in Consequence of which Declaration, (as Mor. Michell now suggests) His Prussian Majesty had given Directions to His Trading Subjects to carry on their Trade. I, in answer to this, did inform Mor. Michell, that as this verbal Declaration of the Earl of Granville's had not come to my Knowledge, in any other way, than from the Information, He then gave me of it, by reading over to Me that part of Mor. Andrié's Letter to His Master, reciting the Conversation, as It had passed, between Him and the Secretary of State, I could give no farther Answer to it, than that It did not appear to me by any Orders I had received from His Majesty, or other authentick Information, that this Demand of Dedommagement for Prizes legally condemned in the Courts of Admiralty, was any way justly founded, And, moreover, that, untill the several Causes, now depending, should be finally determined, It seemed highly improper to enter into a Discussion of the Dedommagement, which, if It ever should be allowed, (which I thought never would be the Case) could not properly be entered into, 'till the

whole Affair of the Prizes, now before the Court of Admiralty, should be finished, when the whole demands might be laid, in one View, before His Majesty.

The only thing therefore, I could promise Him, at present, was, that I would endeavour, to the utmost of my Power, to quicken the Court of Admiralty in going thro' with the Causes, now depending before them, in relation to His Prussian Majesty's Subjects.

I am,
&c^a.

BEDFORD.

[*Endorsed*] in the Duke of Bedford's of the same Date.

18. LEGGE TO NEWCASTLE

(*S. P. For., Prussia, vol. 64*)

Berlin, Sept^{ber} 3/14 1748.

MY LORD,

I have often had the honour to mention to Your Grace the advantage given to our enemies here, by the unjustifiable conduct of our Privateers, in regard to some of the Prussian Ships, and to find that my Sentiments upon this head agreed with Your Grace's. I believe in some instances what they have done has fallen little short of downright Piracy. The French party here have been very diligent, in inflaming the Merchants, and forwarding their Complaints to the King, and have at last so far succeeded, that I am told orders will be sent very soon, (: if they are not already gone :) to recall all Prussian Subjects, who have Prize-Causes depending in England. They will be directed to abandon the defense of them, to protest against the capture as piratical, and against the Jurisdiction of the Admiralty Court, and upon their return the King will erect a Commission, to examine into, and make good their respective losses. I have said and done all I could, to prevent things coming to this extremity, but the subject was too good a one to be easily dropt by those who wish ill blood between the two Courts, and tho' there may be real ground of complaint, I look upon this manner of treating it, rather as a Symptom of their temper, than as the result of the evil itself.

I am with the greatest respect

My Lord
Y^r Grace's most Obed^t.
& most humble Serv^t.

H. LEGGE.

[*Endorsed*] B 17th.

19. LEGGE TO NEWCASTLE

(S. P. For., Prussia, vol. 64)

Berlin, September 17/28, 1748.

MY LORD

I send Your Grace enclosed a letter I receiv'd yesterday from Count Podewils, containing the copy of a petition from Mess^{rs}. Splitgerber and Daun, to the King of Prussia, in relation to their Ship, which has been taken by an English privateer, and is still detain'd in England.

The outrages committed by our privateers, who upon the apprehension of an approaching peace have degenerated into mere pirates, are I am afraid undeniable, and the delays in point of form necessarily attending a cause before the Admiralty Court, are such as may very possibly wear out the patience of a foreigner; especially if he thinks his Ship has been unjustly taken (: which I fear is the present case :) and that the damage suffer'd by the Cargo from so long a detention may make him a loser of near half his property, tho' in the end he should carry his cause. In the mean while the expense of wages, victuals, and all charges attending a Ship under these circumstances, which the owners must continue to pay, are certainly very great and very grievous, but, notwithstanding there seems some Grounds of Complaint, in the present Case, It is entirely owing to the Industry of The Ministers here, That It has been carryed so far. Mess^{rs}. Splitgerber and Daun, The Petitioners most interested, were so well contented with the Representations I had made, in Their Behalf, at home, and more especially with the Letters I had received from The Duke of Bedford upon that Subject, That, They were determined to wait the Decision of The Court of Admiralty, and not to take any Step that might possibly create ill Blood between The Two Courts. It was, I know, much against Their Will, and at the strong Instigation of The Ministers here, That They were prevailed with to Sign this Address to The King of Prussia; I therefore told Mons^r. Podewills, That I would certainly send his Letter, and The Memorial, to my Court, where I sincerely wished They might have no ill Effect, but That it was very evident The Memorial was drawn for the Sake of the Answer, For, admitting the Case to be, as stated, Nobody could believe That Mess^{rs}. Splitgerber and Daun would prescribe to The King of Prussia in what manner Their Losses should be made good, if They had not been directed to do so: That, as to the Affair of the Silesia Loan, It was so sacred a Fund, so insured by Treaty, and so much The Condition of Every Guaranty His Majesty had given, or, I believed, would give,

That, I was astonished They would mention It as Subject to any Charge, tho' but eventual, and in case all other Satisfaction was unattainable. As the Silesia Loan has been mentioned, in a manner, to impeach the Security of it, in some Degree; tho' very remotely; Your Grace will pardon me if I take the Liberty to say a Word or two upon that Subject, before I conclude.

I do not doubt but sufficient Care will be taken, at Aix, That, in what Shape soever We offer a General Guaranty for Silesia, The Payment of Our Own Debt, as well as of That due to Holland (which, together, Amount to near a Million, Sterling) shall be made a *Conditio sine quâ Non*.

It were, likewise, much to be wished, That, a reasonable limited Time should be fixed for the Payment of Both, at the Expiration of which, all Guaranty should be void, if The Money were not paid; for, as long as The Obligation remains, in general, without any Specification of Time, The Answers will be as general, always in the Affirmative, when the Payment is solicited, but, I own, I despair of ever seeing any Effect from Them, 'till Something may be lost by the Non-Execution.

[*Endorsed*] 1st Oct^r. N. S.

[*Enclosure*]

(*S. P. For., Prussia, vol. 64*)

Le Roi ne pouvant qu'être extrêmement sensible à ce que les Armateurs Anglois continuent toujours à s'emparer des Vaisseaux de ses Sujets portants son Pavillon et munis de ses Passeports au grand prejudice du Commerce de ses Etats et de ses Sujets, nous a ordonné d'en faire part à Monsieur de Legge Ministre Plenipotentiaire et Envoye Extraordinaire de S. M. Britannique, ce dont nous nous acquittons en lui communiquant la requête cijointe des Banquiers de Berlin Splitgerber et Daun, qui fait preuve des avanies et insultes insoutenables que les susdits Corsaires Anglois viennent d'exercer tout nouvellement. Nous ne pouvons à cette occasion, que reiterer ce qui a été si souvent représenté en pareilles rencontres à la Cour de Sa Majesté Britannique, en priant Monsieur l'Envoyé de vouloir bien s'employer efficacement, pour faire obtenir aux Sujets de Sa Majesté une decision prompte et juste sur les cas de cette nature, et la cessation entiere des Pirateries.

Quant a ce qui est arrivé aux susdits Banquiers Splitgerber et Daun, Sa Majesté demande pour eux, non seulement que les frais, dommages et interets leur soient remboursés, mais encore que les Armateurs Anglois qui ont commis cette insulte, en soient severement punis, faute de quoi le Roi se verra à la

fin obligé de faire juger les plaintes de ses Sujets dans ce cas cy et d'autres de cette nature par ses propres Tribunaux de justice, et de faire remettre aux susdits Banquiers, ce qui leur reviendra avec justice du dedommagement qu'ils ont a pretendre des pertes qu'on leur fait essayer si injustement en le rabattant des sommes hypothéquées sur la Silesie. Mais nous nous flattons que Monsieur l'Envoyé ne manquera pas d'en faire un fidele rapport à Sa Cour, et qu'il voudra bien employer ses bonnes Offices pour qu'on rende bonne et prompte justice aux Sujets du Roi et qu'on chatie exemplairement les Auteurs des pareilles depredations.

Berlin, ce 23 Sept^e 1748.

H C. PODEWILS.

A Monsieur de Legge Ministre Plenipotentiaire et Envoyé Extraordinaire de S. M. le Roi d'Angleterre.

[*Endorsed*] In Mr. Legge's of Sep^r. 17/28 1748.

Copie

(S. P. For., Prussia, vol. 64)

Notre Vaisseau David le Jeune chargé de Vin et d'eau de Vie sur nôtre compte et a nos risques, conduit par le Capitaine Michel Bugdahl et muni des Passeports, que Vôtre Majesté nous a tres gracieusement accordés, aiant mis a la Voile à Bourdeaux le 5. Mai pour Dünkerque, a rencontré le 7. du même mois un Capre Anglois qui est venu a son bord pour examiner les Papiers de Mer de Bugdahl, en tachant de l'engager par de bonnes paroles et par la promesse de lui donner double fret et 200 livres Sterl: à lui declarer que sa Cargaison appartenoit à des Sujets de France. Mais le dit Bugdahl naïant pû avancer une chose, qui n'etoit pas, le Capre l'a fort mal traité en le blessant à la main et en lui enlevant ses habits, livres et Cartes de Mer avec 12 jusqu'a 15. Oxhoff de Vin. Le jour apres le même Vaisseau rencontra deux autres Capres Anglois dont l'un etoit de Londres et l'autre de Leverpole. Le premier vint en Chaloupe au bord du Vaisseau de Bugdahl en lui demandant ses papiers de Mer, et en l'obligeant d'aller avec lui sur son Vaisseau, et d'y passer toute la Nuit. Le lendemain l'autre Capre de Leverpole vint aussi au bord du Vaisseau de Bugdahl demander ses papiers de Mer, et comme il apprit que le Capre de Londres les tenoit deja, il envoya une Chaloupe pour les chercher. Mais il y eut un si grand orage, qu'elle fut renversée en retournant, et que les hommes perirent et les papiers de mer furent perdus. La dessus le Capre de Londres mis à la voile et celui de Leverpole mena nôtre Vaisseau et sa Cargaison à Leverpole. On y examina fort

Bugdahl et son pilote, sans cependant faire attention, à ce qu'ils denoncèrent pour soutenir le fait tel, qu'il étoit, et en ne remarquant que ce que le capre de Lèverpole pretexta pour excuser son injuste procédé, de sorte qu'il a été impossible jusqu'ici d'obtenir justice de l'Amirauté et la liberté du Vaisseau et de ses marchandises, malgré toutes les cautions, que Bugdahl s'est engagé de fournir touchant le remboursement des domages et depens: En general les juges de l'Amirauté ne cherchent qu'à justifier les Capres, en imaginant non seulement de pretexte pour ne jamais faire payer aux Capres les domages et interets mais encore en adjugeant le remboursement de leur pretendus depens par les Vaisseaux injustement pris et remis enfin en liberté. Par dessus tout cela la mechanceté des Capres, qui ne sauroient souffrir, que les etrangers se melent d'un si innocent negoce, fait durer les Procés, faits sur ce sujet un tems infini, ce qui cause souvent la ruine entiere des Vaisseaux et de ses marchandises, et en fait monter les fraix à une somme enorme, comme cela est prouvé par une infinité d'exemples. Ainsi pour ne pas nous exposer au même traitement, et que pourtant cet accident arrivé à notre vaisseau en plein Mer, par les susdits Capres ne peut être en aucune façon autorisé par l'Amirauté, et ne sauroit être regardé que comme un brigandage exercé contre un vaisseau portant le Pavillon de V^{otre} Majesté, nous osons implorer sa puissante Protection en la suppliant d'ordonner à son Secretaire d'Ambassade Michel à Londres de faire la declaration suivante au Duc de Bedford et par tout ou il conviendra que si nous avons sollicités auprès du juge de l'Amirauté la liberté de notre Vaisseau et le paiement des domages et interets, ce n'a été que par les egards que nous avons pour l'Amirauté et sans vouloir nous susciter un Procés avec les susdits Capres, ne les regardant que comme des Brigands qui ne respectent ni Loix ni Souverain. Et en cas que la Cour Britannique veuille bien permettre contre toute equité et contre les assurances même qu'elle a donné du contraire au Secretaire Michel. que les Vaisseaux des sujets des Puissances neutres comme ceux de V^{otre} Majesté, portants Son Pavillon, et munis de ses Passeports, et chargés encore des Marchandises neutres appartenantes à ses Sujets, soient attaqués et pillés et declarés ensuite de bonne prise par l'Amirauté, nous ne pouvons qu'abandonner Vaisseau et Cargaison au Pouvoir des Armateurs, en suppliant V^{otre} Majesté tres humblement de nous permettre de nous dedomager de cette perte qui monteroit à 10000 Livr: Sterl: sur les effets Anglois, qui se trouvent dans les Païs de V^{otre} Majesté et particulièrement sur les Capiteaux hypothéqués sur la Silesie.

[*Endorsed*] In Mr. Legge's of Septr. 17/28 1748.

20. BEDFORD TO LEGGE

(S. P. For., Prussia, vol. 64)

Mr. Legge.

Whitehall, 27th Sept^r. 1748.

SIR,

I herewith send you an Extract of a Letter of the 19th instant from Sir Henry Penrice, in answer to a Letter wrote to him by my Direction, by which you will see, that the first Voyage made by the Prussian Ship, the Little David, was from Stettin to Port l'Orient, with Ship Timber for the French East India Company, that two other Voyages have been made by her since, one to Bourdeaux, with Goods and Merchandizes in freight on Account of French Merchants; the other for Dunkirk with french Goods, as is likewise said in freight on Account of French Subjects, in which last she was taken by the English Privateers.

You will make the best Use you can at your Court of what appears from the Extract of Sir Henry Penrice's said Letter, and assure His Prussian Maty, that no unnecessary Delay has been given in determining the Cause in question, and that in this, as well as in other Cases that may concern his Subjects, the Courts here will proceed with all the Dispatch, consistent with such Rules as are necessary to be observed to get at a true State of the several Cases, which never can be known without the Informations of both the Parties concerned, and unless such Informations be fairly and impartially considered, it will be impossible to determine these Matters according to Justice and Equity.

I am &c^a.

BEDFORD.

21. LEGGE TO BEDFORD

*(S. P. For., Prussia, vol. 64)*Berlin, Oct^r. 12/23, 1748.

MY LORD,

I have receiv'd the honour of Your Grace's Letter of the 27th of last Month containing an extract of a Letter from Sr. Henry Penrice in relation to the Ship Petit David, by which the Case appears to be very different from the representations made of it by the Proprietors.

The loud complaints made here of the unjust detention of this Ship have all gone upon the foundation of these two Suppositions strongly asserted; Viz. That as there was nothing Contraband on board (Contraband by the Law of Nations) the Ship was not liable to Confiscation, and that as the Cargo was the absolute Property of Prussian Subjects, both Ship and Cargo are exempt from forfeiture.

As to the first point, I don't find that actually at the time

the Ship was taken she had any thing Contraband on board, and I suppose no retrospect can be had in the case which should make her liable to forfeiture in consideration of any former Lading. But if the Ship had been taken in her first Voyage from Stetin to Port L'Orient, with Timber on board so far converted and determin'd to the use of Shipbuilding that it might have been deem'd Muniton of War, in that case it is very probable the Law of Nations would have judged both Ship and Cargo to be lawfull Prize. As to the second point relating to the Property of the Cargo. This is a Fact the discussion of which must depend upon legal proof and evidence on both sides. If the Cargo is prov'd to be the Property of French Merchants, I believe there is no doubt of its being lawfull Prize, tho' the Carrying of an Enemy's goods would induce no forfeiture of the Ship or of such other part of the Cargo as did not fall under this description. And this doctrine the Prussians themselves seem to be apprish'd of and to admit, by resting their whole defence upon the denial of all French Property in the Cargo. I shall reserve the Contents of Your Grace's & Sr. Henry Penrice's Letter to be made use of as occasion shall offer; and as I have not receiv'd an Answer yet to the last Memorial which I transmitted from hence in relation to the Petit David, I believe it will be better to leave the matter untouched till I receive His Majesty's further Commands upon this Subject. In the meanwhile I will endeavour to get the best information I can as to the Sense of the Law of Nations upon the merits of the question, that in case it should be disputed upon that footing, I may not want materials to maintain the Cause with.

I am with the greatest Respect

My Lord

Yr Grace's

Most Obedient

& most humble Servt.

[Endorsed] R 24.

H. LEGGE.

22. BEDFORD TO LEGGE

(S. P. For. Prussia, vol. 64)

Mr. Legge.

Whitehall, 11/22th October, 1748.

SIR,

I had Yesterday Morning a very long and copious Conversation with M^o. Michel, in relation to the Orders he has lately received from His Prussian Majesty to make the strongest Remonstrances here, as well against the Captures that have been made on his trading Subjects by English Privateers, as also by the affected Delays (as His Prussian Majesty is pleased

to call them,) of the High Court of Admiralty, in redressing the Grievances complained of. I am very well apprized that M^o. Michel has only executed the Orders he has received from His Master to repeat these Complaints, which have been exaggerated at the Court of Berlin much farther than in Justice they ought to have been, and I am persuaded M^o. Michel will do me the Justice to say that these Delays complained of, have neither been owing to any Neglect of mine, nor to any Failure of Justice in the Court of Admiralty. You will see by the Copies of the Letters that have passed between my Secretaries & the Judge of that Court, which I herewith inclose to you, the several Steps I have taken in order to bring the Affair of the Bankers Splitbergen and Daun (which has been so strongly recommended to me by you) to a Conclusion, which must have been long ago decided, had not the Judge been obliged to put off the Meeting of the Court, on Account of a violent Fit of the Gout he was attacked with at his House in the Country. That is now over, and the Court of Admiralty begin their Sessions on the 16: instant, so that in a very short time I hope that Affair will be concluded. I must now inform you, Sir, of some farther Particulars which passed in our Conversation, and which I apprehend it is necessary to inform you of, as in all probability you will hear some Mention of it at Berlin. The inclosed Copy of a Dispatch from M^o. Andrié to His Prussian Majesty dated from London May 29: 1744, & containing the Precis of a Conversation between that Minister and the Earl of Granville, then Secretary of State for the Northern Department, will inform you sufficiently upon what Grounds that Prince thinks himself entitled to demand a *Dedommagement* for his Subjects, whose Effects have been seized and since condemned in the Court of Admiralty, in Derogation to that verbal Declaration of the then Secretary of State. In Answer to this I replied to M^o. Michel, that I was entirely ignorant of any such verbal Declaration having passed between the Earl of Granville and M^o. Andrié, having never heard any Mention made of it, 'till he some Time ago informed me of it himself, and having never seen a Copy of it 'till this he now delivered to me. That it was impossible for me, 'till I had received His Majesty's Orders, to give him any positive Answer concerning this Demand, as the verbal Declaration upon which the Right of this Dedommagement was founded, is said to have been given before I had the Honour of being in His Majesty's Service, and of which I must consequently be unacquainted. That however I did imagine there must necessarily have been some Mistake in M^o. Andrié's reporting this Conversation to his Master, as I did not apprehend the Judge of the Court of Admiralty could possibly take any Cognizance

in his Court of such a verbal Declaration, even though it had been transmitted to him by the Secretary of State, (which I could not find to have been the Case,) but that he would have been obliged to have conformed himself to the Law of Nations, which is the only Rule that Court has to guide themselves by, except with relation to those Powers, between whom and this Country there are Marine Treaties subsisting, which is not the Case with the King of Prussia.

As I had not received any Orders from His Majesty what Language it might be proper to hold upon this Subject, I chose to wave entering farther into the Discussion of it with M^o. Michel, & I trouble you with this Account only to put you upon your Guard, in Case His Prussian Majesty or his Ministers, should hold the like Discourse to you at Berlin. I believe it is unnecessary to recommend to you, to suggest in Answer to any Complaints that may be made to you of illegal Captures by Privateers, and of affected Delays of the Court of Admiralty, that the greatest Care imaginable be taken to ascertain the Complaints before they are sent over hither, and not permit them to be exaggerated, which can only tend to create a Disunion between y^e two Courts, & not be of any Advantage to the parties injured, I do not pretend to disculpate the Proceedings of our Privateers, I believe in many Cases they have been highly blameable, but I can venture to affirm on the other Hand, that Complaints are too easily received at the Court of Berlin, upon the bare Allegations of those Merchants, who have carried on during the War an illicit Trade, and have lent their Names to cover the Effects of his Majesty's Enemies from being seized by his Ships of War and Privateers.

The latter Part of my Conversation with M^o. Michel, turned upon the same Subject as Count Podewils Pro Memoria delivered to you did, Viz^t. That if His Prussian Majesty found no Redress for his injured Subjects upon these Representations, he should find himself obliged to indemnify them out of the Silesia Loan. My Answer to this was, that I was excessively surprized to hear His Prussian Majesty had any Thoughts of this Nature, as I thought I could venture to take upon Me to assure him, (tho' I had received no particular Orders thereupon from His Majesty,) that the King would always look upon the King of Prussia's fulfilling his Engagements to his Subjects upon the Silesia Loan, as the Condition upon which that Dutchy was guaranteed by His Majesty to the King of Prussia, which Condition, if it was once violated, would of Course annull the Guaranty.

I am &c^a.

BEDFORD.

[Endorsed] under flying Seal to the Duke of Newcastle.

23. LEGGE TO BEDFORD

(S. P. For., Prussia, vol. 64)

Berlin, Oct^{br} 28/Nov^{br} 8, 1748.

MY LORD,

The Letter I wrote to Your Grace of October 12/23 is in part an answer to that which I have since had the honour to receive from You of Oct^{br}. 11 past, containing extracts of letters from your Secretaries to Sir Henry Penrice, with his answers, and extracts of letters from Monst^r Andrié to the King of Prussia.

The affair of the Prussian captures has certainly been exaggerated here; great pains have been taken to convince the King, that the decisions have been affectedly delay'd, on purpose to distress his Subjects, as such, and discourage them from engaging in commerce.

Accidental impediments have furnish'd some ground for this language, which perhaps too is the better heard, as it carries along with it a kind of tacit flattery, by supposing that the commerce of Prussia is worth the attention of Great Britain, and even capable of giving her Jealousy.

As idle a Supposition as this is, I believe it has had its weight; but the business is to disappoint (if possible) the views of those here, who I don't doubt are well pay'd for cultivating enmity between the two Courts, and finish this affair without detracting from the honour or interest of Great Britain; And I believe Your Grace will be of opinion, that it imports both as much not to do an injury, as not to suffer an insult.

No pretension can in my poor opinion be more destitute of real foundation, or contain a doctrine less to be admitted by His Majesty, than that of *No Search* upon the authority of a declaration from a Minister of State. Such a declaration can never have the force of a Treaty of Commerce, much less of an act of Parliament, and as Your Grace observes, is such as the Judge of the Admiralty Court can take no cognisance of whatsoever.

* And yet it is not surprizing that a foreign Minister should think himself authorized to such a Declaration, he is not supposed to enter into the Nature of the English Constitution, and must take it for granted that the Declaration of the Secretary of State is conformable to Law, and contains no more than can be, and will be made good, for if the contrary is supposed, there is an End of all the Confidence, and consequently of all Intercourse between His Majesty's Ministers, and Those of Foreign Powers. I am afraid if we were to plead at any foreign Court the Insufficiency (according to the Laws

* From this point the letter is written in cipher.

of England) of a Declaration made by the Secretary of State, the Answer would be, that it is Matter of domestick Consideration for Ourselves, and that if they have been led into an Error by a Declaration, which had no Validity, the Person who made it ought to pay the Damage, and not those who have acted upon it. I have read Monsieur Andrie's Letter very attentively, and if the Conversation he reports is fairly stated, it is evident that the Subjects of the King of Prussia are put upon the same Foot with the Dutch by our Treaty of Sixteen Hundred and Seventy four. It is asserted here, that the same Assurances were repeated afterwards both by Lord Harrington, and My Lord Chesterfield, and as one Precedent goes farther than many Assertions, they quote an Instance of our having already paid upon a former Occasion, Eight Hundred Pounds, to indemnify a Prussian Merchant for Timber seized on Board a Dutch Ship, bound from Stettin to Port l'Orient, and appeal to your own Justice for equal Treatment in similar Cases.* But I beleive the question of what is or is not contraband by good luck does not enter into any of the causes now depending. I have talk'd the matter fully over with Count Podewils, who seems convinced, that they must not expect any other measure than that of the law of nations. All he contends for, is, that the property at present in litigation is absolutely and bona fide the property of Prussian Subjects: Not denying but that if any part of it can be proved to belong to the French, it is justly subject to forfeiture. At the same time he affirms, that tho' the French had made large offers to such as would undertake to transport the Merchandizes of France, the strictest orders had been given to all the Merchants, not to engage in this commerce, and that he himself told the King of Prussia, if they did, they must expect to have the whole seiz'd and confiscated.

That our Privateers have been guilty of illegal practices, I am strongly of opinion with Your Grace, and I own there does seem to me to be one case in which an equitable Claim to some compensation would lye; and that is this: When Ships loaden with perishable commodities have been taken and detain'd many months before the cause is heard, to the great detriment of the Cargo, if in the end the sentence shall be against the Captor, it seems to be a hard case, that the person thus injur'd shall lose half the value of his Cargo into the bargain, and after paying wages to his Ships Company, and all charges incident to the Ship, and the Law Suit, be half ruin'd, tho' he gains his cause. And yet this will be the case if he has no damages granted to him by the Court for a false capture, nor any satisfaction from the Publick. This equity seems to extend to the whole, or any part of the Cargo

* The cipher ends here.

which shall be found not contraband, nor the property of His Majesty's enemies.

If any temperament of this kind should be approved by His Majesty, particular care must be taken to have it fully express'd and understood, upon what footing the compensation is given, that it may never be pleaded hereafter as an acknowledgement of the King of Prussia's right to an uninterrupted, unvisited commerce with the enemies of Great Britain.

I heartily wish this troublesome affair were brought to some issue, and have been thus prolix (: for which I ask pardon :) in communicating the sense of people here, as well as my own poor sentiments upon it, that no materials may be wanting for those to judge upon, who will be able to form a much wiser determination upon the whole than I can pretend to suggest.

* I have made the Declaration in relation to the Silesia Loan, according to His Majesty's Commands, and the Opinion of Their Excellencies the Lords Justices, in the strongest Terms I was able, and believe not without Effect. Yesterday Monsieur Podewils told me that Orders were sent to Monsieur Michel, to declare His Prussian Majesty's Intention of fulfilling the Engagement of the Silesia Loan with the utmost Punctuality, but that His Prussian Majesty flattered himself on the other Hand, some Equity would be shewn in compensating the unjust Losses of his Subjects. This is a manifest Alteration for the better of the Language, which has been hitherto talked upon this Part of the Subject.

I am with the greatest respect

My Lord

Your Grace's

Most obedient &

Most humble Serv^t

[Endorsed] R 10th.

H. LEGGE.

24. NEWCASTLE TO LEGGE

(S. P. For., Prussia, vol. 64)

Hanover. October 16/27, 1748.

Mr. Legge.

SIR,

I send you an Extract of a Letter, that I wrote to The Duke of Bedford, upon the extraordinary Memorial, deliver'd to You by Mo^r. Podewiltz and transmitted in your Letter, of the 17/28 Sept^r. I send You also, at the same Time, Extracts of the Letters, which I have receiv'd from The Duke of Bedford; and of the Minutes of Their Ex^{cles}, The Lords Justices: And It is His Majesty's Pleasure, That You should acquaint

* From this point to the end is in cipher.

Monsieur Podewiltz, with what The Duke of Bedford says, relating to the Delay, in giving Satisfaction, upon the Prussian Complaints, which, undoubtedly, His Grace will have fully explain'd to Monsieur Michel : And You will then, according to the humble Opinion of Their Excellencies, The Lords Justices, acquaint Monsieur Podewiltz, 'That His M^{ty}'s Guaranty of Silesia given to the King of Prussia entirely depends upon His Prussian M^{ty}'s fulfilling the Engagements He is under ; to His Maj^{ty} with regard to the Silesia Loan ; & must be so understood, after the Renewal of it, in the Definitive Treaty.'

I am &c^a,
HOLLES NEWCASTLE.

[Endorsed] ☉ Post.

(S. P. For., Prussia, vol. 64)

Extract of The Minutes of Their Excellencies The Lords Justices, of Thursday, 6th October 1748.

Present.

Lord Archbishop of Canterbury.
Lord Privy Seal.
Duke of Richmond.

Duke of Bedford.
Mr. Pelham.

Read a Letter from The Duke of Newcastle to The Duke of Bedford, acquainting His Grace, That Mr. Legge had transmitted to him a Copy of a Letter from M. Podewiltz, with The Petition of Two Prussian Merchants, concerning Their Ship taken by an English Privateer ; intimating, That, if Justice be not done, His Prussian Majesty will indemnify His Subjects of This, and other, Losses sustained from English Privateers, by stopping so much from The Silesia Loan.

Recommended to His Grace The Duke of Bedford to acquaint The Duke of Newcastle, That no Delay has been given but what was unavoidable, either from The Parties not having been ready for a Hearing or from The Indisposition of the Judge, without which The Cause had been determined before This ; and further, That Their Excellencies agree in Opinion with His Grace, That it may be advisable That His Majesty's Ministers at Berlin, and at Aix, should be directed to declare to The Prussian Ministers at both Those Places, That His Majesty's Guaranty of Silesia, given to The King of Prussia, entirely depends upon His Prussian Majesty's fulfilling The Engagements he is under to His Majesty, with Regard to The Silesia Loan, and must be so understood after The Renewal of it in The Definitive Treaty.

25. LEGGE TO NEWCASTLE

(S. P. For., Prussia, vol. 64)

Berlin, Nov. 1/12, 1748.

MY LORD,

In consequence of the Declaration I made here, by His Majesty's Commands, and in conformity to the Opinion of their Excellencies the Lords Justices, upon the Subject of the Silesia Loan, I have receiv'd a message from the King of Prussia by Count Podweils, to the following Effect.

That His Prussian Majesty was fully determin'd to execute his engagements with regard to the Silesia Loan, with the utmost exactness; that he had sent orders to Mons^r Michel to make the same Declaration in England, & had commission'd him (Count Podweils) to make it to me. On the other hand His Prussian Majesty flattered himself that in regard to Justice, as well as consistently with the sentiments of Friendship, His Majesty had express'd towards him, care wou'd be taken, to indemnify such of his Merchants, as had neither carry'd any thing Contraband, nor lent their names to Cover the Property of the French, for the Expences they had made, and the losses they had suffer'd, in their Cargoes by so long a Detention in England; That His Prussian Majesty was the better authoriz'd to expect this, as he had receiv'd the most positive assurances that the Trade of his Subjects shou'd not be molested, provided they dealt in nothing Contraband, and as he had already tasted of His Majesty's Justice

£
in the reparation of 800, that was given to one of his Merchants upon a Cargo, which was seiz'd and afterwards acquitted as not being found Contraband.

To this, Count Podweils added from himself, that the Strictest Orders had been given by the King, to all the Merchants, not to deal in any Merchandizes on account of the French, tho' the French had offer'd them great rewards to transport their goods from Port to Port, and that if any part of the Commodities now in Controversy, were prov'd to belong to French Merchants, it was not expected, they shou'd be restor'd; All the King his Master desir'd was, that Reparation shou'd be made, where it was evident, Injury had been done.

* This Language is so very different from That, contain'd in the Memorial; and from That which was held here, before the Signing of the Definitive Treaty; That I am in great Hopes, This troublesome Affair may soon be brought to an amicable Conclusion. That I might not be mistaken in the Message I desired Monsieur Podeweils to repeat it, at different

* The remainder of this extract is in cipher.

Periods of Time ; and always observed, That It consisted of the Same Words ; Viz^t, That the King of Prussia flatter'd Himself with the Hopes of Satisfaction for His Subjects.

I am with the greatest Respect
My Lord Your Grace's
Most Obedient
& most humble Serv^t

H. LEGGE.

[*Endorsed*] R: 4/15.

26. BEDFORD TO LEGGE

(*S. P. For., Prussia*, vol. 64)

Whitehall, 15th Novemb^r, 1748.

Mr. Legge.

SIR,

As I see by your Letter of Nov^r 1/12 that His Prussian Maty cites (as a Precedent of the Right his Ships detained here have of an Indemnification) the Reparation of £800 that was given to one of his Merchants upon a Cargo which was brought to England some time ago, & afterwards released, I have enquired into the State of that Fact, & find it so different, from what, I am persuaded, it has been represented to the King of Prussia, that I would lose no Time in informing you of the Truth of it ; As I sincerely wish you may be able to remove (before you leave Berlin) every Suspicion that Prince may entertain, of His Subjects being denied any favour or Protection in this Country, w^{ch} can possibly be granted them, consistent with our Laws and Constitution.

The Case was as follows. About Two years ago (in Consequence of Orders which had been given to the Captains of Men of War, to bring to England all Ships of all Neutral Powers whatsoever which they should find laden wth Naval Stores, & that not with a View of confiscating, but of buying their Effects at as high a Price as they could possibly be sold for elsewhere ;) The Heerlykeyt Kuyndert (which must certainly be the Ship alluded to) was brought hither amongst others. Orders were accordingly given by the Board of Admiralty for buying her & a Summ fixed on for that purpose with the Owners ; when upon examining more strictly into the Matter, the Ship turned out to be Dutch, and the Lading Prussian, and consequently there was no going on with the purchase, without flying in the face of that Act of Parliament which prohibits all foreign Ships from importing into England, the Produce of any other Country than their own.

However as no Right of Seizure was proved, or attempted to be proved, it was but just to indemnifie the Master for his Demurrage, Damages &c. and therefore £766 was assigned him for that purpose, with the Consent & Approbation of all Parties.

This Sir is the State of the Case of the Ship now quoted as a Precedent for the Treatment of all Prussian Ships in general which have been taken by His Majesty's Ships or Privateers during the late War; You plainly see this Ship never was intended to be confiscated but purchased, nor was it released in Consequence of any Declaration of a Secretary of State, but in conformity to established Laws, to Acts of Parliament, and consequently can never be looked upon as a paralel Case with the Little David.

You will not fail to take the first oportunity of representing this Affair in it's true Light to The King of Prussia, & I own I have too great an Opinion of His Prussian Majesty's Equity as well as of His Policy, to think that for a trifling Summ (and that not liquidated) he would run the least Risk of endangering The King's Guarantee to him of Silesia & Glatz.

I am &c.

BEDFORD.

27. KLINGGRÄFF, PROPOSITION, SEPTEMBER 1, 1749

(*S. P. For., Foreign Ministers in England*, vol. 48)

Proposition

Le Roy de Prusse bonifiera aux Proprietaires les gros Interests de 7 p^r C^t jusqu'au Mois de Juillet de cette Année 1749. ces Interests seront tous payés de la maniere suivante : Les Proprietaires toucheront d'abord Trois Années, autant au Mois de Janvier prochain 1750 et Trois autres Années au Mois de Juillet prochain 1750 ; De Sorte que les 9 Années d'Interêts qu'ils ont a pretendre seroient tous Acquittés dans le Cours d'une Année Mais Le Roy se flatte qu'en Consideration d'une proposition si profitable pour les Interressés, ils seront assés equitables pour donner sans perte de tems les mains a une autre, qui n'est pas moins juste ; C'est de faire une Nouvelle Convention a Commencer du 10 Juillet de la presente Année 1749 : (pour laquelle le Ministre Plenipotentiaire de S. M. Prussienne est muni d'un Plein pouvoir :) portant.—

Que le Capital soit mis a un Interet raisonnable et coutumier aux Fonds Publics en Angleterre Savoir a Trois et demy p C^t lesquels seront non seulement payés exactement aux Termes a Specifier dans la Nouvelle Convention mais encore le Capital a ceux qui y seront pareillement spécifiés de façon que le

Capital et les Interrets seront entierement acquités au Mois de Juillet 1753 Messieurs Les Proprietaires trouveront d'autant moins de difficulté de se preter a cette Convention, que la diminution des Interrets, qui semble d'abord se presenter, se dissipera bientot, s'ils veulent Considerer, qu'en touchant dans le Cours d'une seule Année Neuf Années d'Interrets a 7 p. Ct. chaque Proprietaire se formera par là un Nouveau Capital asses considerable pour le placer a Interret, Outre l'avantage que chaqu'un y trouve de voir des Arrangements Solides par lesquels toutte cette Affaire sera menée a une heureuse fin en peu de tems.

Fait a Londres ce 1 Septembre 1749.

JOACHIM GUILLEAUME KLINGGRAFF.

28. KLINGGRÄFF, ECLAIRCISSEMENTS, OCTOBER 25, 1749

(S. P. For., *Foreign Ministers in England*, vol. 48)

Eclaircissements sur la Proposition que S: M: le Roy de Prusse a fait faire aux Proprietaires des Dettes hypothéquées Sur la Silesie.

Dans la proposition du Roy, S: M: n'a nullement intention par une nouvelle Convention de Changer la nature de Son Obligation fondée sur les Traittez ; Le Plein-Pouvoir porte bien positivement que les Traittez en seroyent la Base, et que cette Convention n'est proprement qu'un Arrangement Solide pour remplir Ses Engagements en fort peu de tems, puisque Capital et Interrets seroyent tous payez au Mois de Juillet 1753. Rien ne prouve mieux combien S: M: veut satisfaire les Proprietaires que les arrangements Solides qu'elle a pris pour payer les Interrets de 9 annés à 7 pour cent entre cy et huit mois, et de payer tout le Capital en trois termes, Ses Finances à la sortie d'une Guerre ne luy ayant pas permis de le faire plustôt : Ce n'est uniquement qu'en cette consideration et sur ces arrangements profitables pour les Proprietaires que la Proposition de reduire l'Interet à 3. et demy pour cent a été faite, on seroit même allé à 4. pour Cent, Si quelques uns des Directeurs avoyent voulu faire l'honneur de Communiquer la reponse de leur Assemblée à L'Envoyé du Roy, comme Il avoit lieu de S'y attendre. Au reste la proposition a été fort goûtée de plusieurs Personnes qui sont considerablement Interessée dans ce Fond, et qui viennent souvent temoigner leur mecontentement sur l'opiniatreté de quelques Personnes, qui ont empeché le succes d'une si bonne affaire, car la sureté au lieu d'etre changée se trouve beaucoup mieux etablie pour les Proprietaires.

A Londres ce 25^e 8^{bre} 1749.

KLINGGRÄFFE.

(S. P. For., Foreign Ministers in England, vol. 48)

Translated.

Detail in what manner the English Debts shall be paid, after the Interest to the 10th July 1749 is paid with 7 $\frac{1}{2}$ Cent and the Rest agreed at 3 $\frac{1}{2}$ Cent.

	Capital.	Interest.	The Whole.
	£	£	£
The Whole Capital has been	£250,000	. . . . .	. . . . .
9 Years Interest at 7 $\frac{1}{2}$ C ^t . from 1740 to 1749 the 10 th July	. . . . .	157,500	407,500
Reduced 700 Bonds, Amount in Cap ^l & Int ^t	70,000	44,100	114,100
Remains to be paid the 10 th July 1749	£180,000	113,400	293,400
The Int ^t . for the 9 Years is . £113,400 of these shall be paid now			
for 3 Years £37,800			
for 3 Years the 10 th Jan. 1749/50 37,800			
for 3 Years the 10 th July, 1750 37,800	. . . . .	113,400	
Remains Capital Int ^t . at 3 $\frac{1}{2}$ C ^t . from 1749 to 1750 the 10 th July	£180,000	. . . . .	180,000
Ditto from 1750 to 1751 D ^o.	. . . . .	6,300	. . . . .
Becomes due July 1751	£180,000	12,600	192,600
1751 July shall be paid 40 $\frac{1}{2}$ C ^t . Capital & 2 Years Int ^t	72,000	12,600	84,600
Remains July 1751	£108,000	. . . . .	108,000
Int ^t . at 3 $\frac{1}{2}$ C ^t . from 1751 to 1752 July . . . . .	. . . . .	3,780	. . . . .
Becomes due in July 1752	£108,000	3,780	111,780
1752 July shall be paid 45 $\frac{1}{2}$ C ^t . Capital & One Years Int ^t	81,000	3,780	84,780
Remains July 1752	£27,000	. . . . .	27,000
Int ^t . at 3 $\frac{1}{2}$ C ^t . from 1752 to 1753 July . . . . .	. . . . .	945	. . . . .
£ 27,000		945	27,945
1753 July shall be paid 15 $\frac{1}{2}$ C ^t . Capital & all the Int ^t	27,000	945	27,945

all Ballanc'd.

Terms of all the payments propos'd.

July 1749 now ready	£37,800
Jan ^r . 1749/50 to be paid	37,800
July 1750 D ^o	37,800
July 1751 Capital & Int ^t	84,600
July 1752 D ^o D ^o	84,780
July 1753 D ^o D ^o	27,945
	£310,725

29. PROPRIETORS TO NEWCASTLE, NOVEMBER 1, 1749

(S. P. For., Foreign Ministers in England, vol. 48)

To his Grace the Duke of Newcastle

May it please your Grace

The Proprietors of the Silesia Loan are obliged to apply to your Grace on Account of the inclosed Proposal which was made to a Meeting of Proprietors Summoned by Publick Notice for y^t purpose.

The said Proprietors are fully sensible of his Majestys Protection & Care of his Subjects Interest therein & beg he will cause the proper instances to his Prussian Majesty for paying the Principal & Interest thereof to be repeated in such manner as He shall judge fitting For after full Deliberation the Proprietors were of Opinion they ought not to Deviate from y^e Agreem^t subsist^s.

If Contracts if Bonds if Treaties if Guaranties are any Evidence of just demands the Proprietors are furnished therewith and they conceive his Prussian Majesty must have been misinformed by some Persons unacquainted with the consequences of want of Punctuality in Payments. For the Lenders cannot suppose (if it had been so explained to his Prussian Majesty) that a Proposal for abating from them about £17,000 Sterling could be an Object equal to the Evil of a Voluntary neglect of Paym^t.

The Proprietors have had as strong Assurances as Words can give that there is actually in England Money sufficient and ready to pay 3 Years Interest & this was pressed as an inducement to a New Agreement it was even Urged as the strongest Argument for a New Agreement 'if not when will you have this 3 Years Interest now Offered'. The Lenders have too much respect to his Prussian Majesty to impute the Suggestion before mentioned in any thing but the indiscretion & ungrounded Fears of some of the Lenders. And Your Grace is requested to insist upon the making Payment of s^d 3 Years Interest & that the remainder be not delayed.

Your Grace will at once see there is no Proposal to pay off the Interest due & so much of the Principal as shall not be Voluntarily continued at a certain Interest for the future, which is the only way we know in England of reducing Interest on Loans. Beside the Proprietors must observe that the whole Principal & Interest thereon ought to have been paid off at several Terms the last whereof expired the 10th January 1745 And do insist that from the 10th January 1745 both the Principal and Interest thereon ought in reason to bear Interest For the Very Proposal Setts forth the Hardship which the

Lenders suffer by such an Arrear of Interest as now exceeds £63 ³/₄ Cent. It shews they have not hitherto been paid as they ought and the Redress proposed is that they shall have for the future but $\frac{1}{4}$ what is payable by the Present Agreement.

It cannot be supposed this matter was laid in its true light before a Prince of so much Penetration as his Prussian Majesty He woud readily see the Unfitness of such a Proposal among Equals much more from a Prince of his Dignity. He would see that tho' his Power may compell Lenders to Compound & Lose some part of their Right tho' his Rank place Him beyond their Resentment if He refuse to pay any part of their Right yet Acts of Power so misapplied would hurt Himself.

[*Endorsed*] The Answer to the Prussian Minister's proposal.
 & Nov. 1. 1749.

30. HOLDERNESSE TO ALBEMARLE

(*S. P. For., France, vol. 242*)

Very Secret.

Whitehall Dec^r 12th 1751.

Earl of Albemarle.

MY LORD,

The Prussian Secretary Mons^r Michel, waited on the Duke of Newcastle Yesterday, &, by Order of the King His Master, declared; 'That the King of Prussia's trading Subjects not having had Justice done Them in England, upon several Complaints, which had been made, of Losses sustained, at Sea; His Prussian Majesty had appointed a Court of Justice, within His own Dominions, to settle, & determine these Cases, & upon their Decision, would detain so much of the Silesian Loan, due to the Subjects of Great Britain, as might Suffice, to answer the Claims of the Prussians, for the Losses, they have sustained by His Majesty's Ships of War, Privateers, &c.'

The Duke of Newcastle, Surprized at so extraordinary a Declaration, desired, that Mons^r Michel would give It, to Him in Writing, which He declined, as exceeding His orders, but offered to write to His Court, for leave to do so.

I have the King's Permission to send Your Ex^{ty}, in the greatest Confidence, an Account of what has passed Hitherto upon this Subject; No Notice will be taken of It, till it is known, what Effect, the Letters, which Mons^r Michel has undertaken to write, will have upon His Prussian Majesty; & If that Prince should ultimately persist, in defalking any Part of the Debt, due upon the Silesian Loan, there can be no doubt, but that, His Majesty's Guaranty of Silesia, will be entirely Null & Void; As the Satisfaction of the Sums raised

for the Security of that Dutchy, was an Express Condition, of It.

Your Ex^{ty} will easily perceive, that this Affair is of a Nature, that requires the Utmost Secrecy, until some final Resolution, shall be taken upon It.

I am, &c
HOLDERNESSE.

31. CONVERSATION BETWEEN NEWCASTLE AND MICHELL

(*S. P. For., Foreign Ministers in England, vol. 48*)

Newcastle House March 11th 1752.

The Duke of Newcastle deliver'd, this Day, by the Kings Order, to Monsieur Michel, the Prussian Secretary, His Majesty's Answer, in Writing, to the Application, made, by Mo^r Michel, relating to the Embden Company.

The Duke of Newcastle, then, acquainted Mo^r Michael, that the King, having heard Nothing further of the King of Prussia's Intention to apply the Residue of the Money, due to the Creditors on the Silesia Loan, for the Satisfaction of Such of His Subjects, Whose Causes should be determin'd, by Such Persons, as His Prussian Majesty should appoint, to have been wrongfully decided, by the Court of Admiralty, and Court of Appeal here; His Majesty was persuaded, that the King of Prussia, upon further Consideration, had, Himself, seen the Impropriety, and Irregularity, of such a Proceeding: But that, if contrary to Expectation, Mo^r. Michel's former Declaration should be put in Execution, His Majesty could not help looking upon that Treaty as null, and void, When His Prussian Majesty had thought proper to break an essential Condition of it, which was to have been perform'd by Him.

Mo^r Michel replied, That He had represented this Affair, in that Light, to the King, His Master;—Seem'd to admit the Reason of it; And that Nothing had been done, in the Case of the King of Prussia's Subjects, but What was the Rule, with regard to all other Foreign Powers; And to think, that We should hear no more of this Affair. He also told me, that He had acquainted His Court, that Nothing irregular had been done, with regard to the British Subjects, Who had been demanded by the Captain of one of His Majesty's Ships in the Downes.

[*Endorsed*] Account of what pass'd between The Duke of Newcastle, & Mons^r Michel, on Wednesday, 11th March. 1752.

32. REPLY GIVEN TO MICHELL AS REPORTED IN HIS DISPATCH OF MARCH 24 1752 (THE DATE IS PROBABLY MARCH II, 1752)

(S. P. For., *Foreign Ministers in England*, vol. 48)

Projet de Reponse à faire au Sieur Michel.

Autant que J'ai pu comprendre ce que Le Sieur Michel m'a déclaré des Ordres du Roy son maitre, relatifs aux Vaisseaux de Ses Sujets pris pendant la dernière Guerre, et condamnés par des Arrêts de la Haute Cour d'Amirauté ; il se reduit a ceci :

' Que S. M. Prussienne, ne reconnoissant pas La Jurisdiction de Ladite Cour, s'attendoit, que Ses Sujets fussent dedommagés des Pertes qu'ils avoient faites par La Prise de Leurs Vaisseaux ; Et que si on continuoit à refuser ce Dedommagement¹ ; l'Intention de Sa Majesté estoit, d'établir une Commission pour examiner Les Pretensions de Ses Sujets à cet egard, et pour fixer juridiquement La Valeur de Leurs Pertes ; et de la defalquer ensuite sur ce qui reste à payer des Dettes de la Silesie.'

Ayant fait Rapport au Roy de cette Declaration ; Sa Majesté m'a ordonné d'y donner la Reponse Suivante ; et, afin d'éviter tout mal entendu, m'a permis de la donner par écrit.

Que Les Arrêts dont on se plaint ont été prononcés par une Cour Souveraine établie de toute Antiquité, et qui a toujours décidé des Causes de cette Nature : Que Sa Jurisdiction avoit été reconnue par toutes les Nations de l'Europe, sans avoir jamais été revoqué en doute ; et qu'elle ne pouvoit être disputée avec La moindre ombre de Raison ni de Justice, Que La Commission à établir par Sa Majesté Prussienne, & l'Intention de s'attribuer une Jurisdiction, qui appartient incontestablement à un autre Etat Souverain, est une Innovation inouïe, et à laquelle on ne pouvoit se soumettre : Que Le Defalquement dont il s'agit, seroit¹ une Nouveauté aussi inouïe que l'autre : Que Les Dettes de la Silesie sont fondées sur un Article Exprès tant des Preliminaires de Breslau, que du Traité de Berlin de —, dont Le Roy est Garant, et Le Seul Article de ces Traités qui interesse immédiatement La Grande Bretagne : Qu'en divertissant telle partie que ce soit des Sommes promises par cest Article à d'autres usages quelconques qu'à la Satisfaction des Creanciers, on violeroit manifestement Les Susdits Traités ; Et que dans ce Cas là, Le Roy se tiendroit *ipso facto* pour degagé de toute obligation par rapport à la Garantie que Sa Majesté en a donnée.

¹ 'seroit' is written above 'est' in original.

33. 'SENTENCE' OF THE PRUSSIAN COMMISSION,
JUILLET 1752

(S. P. For., *Foreign Ministers in England*, vol. 48)

Sentence.

Le Roi Nous aiant formé en Commission, par Ordre du 7^e Decembre 1751 Nous y charge, De recevoir les Plaintes de Tous Ses Sujets, qui ont souffert des Pertes et Dommages, durant la derniere Guerre, par les Depredations de La Marine Angloise ; de Les examiner exactement, et à fond, selon les Loix du Droit des Gens, et les Us, et Coutumes, de Mer, etablies entre Les Souverains ; d'exiger d'Eux la Preuve de Leur Dommage precis ; de rechercher Leur Pretensions à toute Rigueur, et avec la plus parfaite Impartialité ; d'en former un Quantum liquidé, dont Nous puissions repondre devant Dieu, et tout l'Univers ; et d'en dresser, unanimement, une Sentence, avec nos Raisons de decider.

Conformement au quel Ordre, Nous estimons que selon le Droit des Gens, universellement reçu, et les Us, et Coutumes de Mer, etablies entre Les Etats Souverains, par plusieurs, Traités ;

1^{mo} Les Armateurs Anglois n'étoient point en Droit de saisir, en pleine Mer, Les Vaisseaux Prussiens, ou les autres Vaisseaux Neutres, sur lesquels ne se trouvoit point de Contrabande, soit qu'ils fissent Voile à des Ports ennemis de la dite Nation, soit qu'ils en revinssent, d'en faire Capture, ou de Les detenir dans Leurs Ports, ni en general, ni sous Pretexte que la Charge, ou Partie d'icelle, en appartenoit aux Ennemis d'Angleterre.

2^{do}. Que les Marchandises reputées de Contrabande, pendant la Guerre se trouvent succinctement determinées dans les Traités de Navigation, et dans la Declaration formelle, faite par Le Ministère Anglois au Sieur Andrie, Envoyé du Roi, et que sous cette Denomination, ne sauroient être comprises, ni les Marchandises libres, et permises, appartenants aux Ennemis, ni, en general, les Bois, le Seigle, et autres Effets, qui ne sont point Munitions de Guerre.

3^{tie}. Que Les Tribunaux Anglois ont visiblement agi contre tout Droit, quand Ils ont déclaré confiscales de semblables Marchandises, qui n'étoient nullement de Contrabande, et qu'enfin,

4^{to}. Leurs Decisions, et leurs Procedures, ne peuvent, ni au Cas present, ni en general, entre Deux Puissances Souveraines constituer aucun Droit, ou aucun Prejugé.

Que, par consequent, il compete à tous Les Sujets Prussiens, un Dedommagement de toutes les Pertes, qu'ils ont souffertes,

soit par l'injuste Capture, et Detention, des Vaisseaux Prussiens, tant pour Le Vaisseau lui-même, que pour la Cargaison, soit pour les Marchandises chargées sur d'autres Vaisseaux Neutres, qui ont été pareillement pris, et detenus ; soit pour les Marchandises, qui Leur ont été confisquées, et qui étoient chargées, ou sur des Vaisseaux Prussiens, ou sur d'autres Vaisseaux Neutres ; Soit, enfin, pour les injustes Depens, et Longueur, des Procedures, qui ont été oblige d'essuyer par devant Les Tribunaux Anglois.

En consequence des Principes, ci-dessus posés, et qui se trouvent détaillés plus au long, dans une Deduction particuliere, Nous avons examiné, avec Exactitude, les Pretensions de Tous les Sujets Prussiens, qui se sont présentés par devant Nous, verifié, avec toute la Precision requise, les Preuves, par Eux rapportées, les Dommages à Eux causés, et n'avons rien laissé passer de ce qui ne pouvoit se justifier, selon ces Principes reçus ; n'ayant, de plus, rien supplié d'Office hors les Interets, qui s'en suivent par une consequence naturelle, que les Choses, qui paroissent clairement des Documents produits aux Actes.

Tout vû, et considéré, Nous concluons conformement à Notre Serment, qu'il compete, et doit être alloué, soit en Capital, soit en Interets, jusqu'au dern : Dec. 1751. sauf les Interets ulterieurs, jusqu'au Jour du Payement, aux Sujets Prussiens ci-dessus nommés, les Sommes portées d'autre part, dans les 66 Sentences de Liquidation ci-jointe, & qui sont cottées selon les Numero des liasses particulieres d'Actes de la Commission, auxquelles Sentences, comme ici se trouve à droite la Somme liquidée par les Plaignans.

[*Endorsed*] Sentence. With Mo^r Michel's Memorial of Novem^{ber} 22^d 1752.

(S. P. For., Foreign Ministers in England, vol. 48)

<i>Somme liquidée par</i>		<i>Four</i>	<i>Somme Arrivée</i>	
			<i>Capital</i>	<i>Intérêts jusqu'au dern. Decbr. 1751</i>
400	23	1. Tornicke et Bingel de Stettin	328	16
6,973	12	2. Vanselow de Stettin	5,716	
28,101		3. Gref de Stettin	9,009	6
572	12	} 4. Veuve de Schroder de Stettin	401	6
13,964	18		10,174	19
590		5. Schultz de Stettin	479	2
2,459	17	6. Barthow de Stettin	1,961	19
17,402	9	7. Palmier, et Le Coq, de Berlin	9,187	11
2,414	3	8. Le Coq de Berlin	440	13
798	20	9. Mentzel de Hirschberg	486	3
5,551	20	10. La Veuve de Jean Martin Gottfried et Gendre, de Hirschberg	3,178	15
4,657	3	11. La Veuve de Godefroi Glafey et Fils, de Hirschberg	1,503	11
2,096	5	12. Jean Hartmann de Hirschberg	1,269	4
447	8	13. Jean Godefroi Tietze de Hirschberg	283	22
651	9	14. Christophe Cuentz de Hirschberg	469	17
365	14	15. Ernest Sigismund Schober de Hirschberg	142	6
675	7	16. Jean Godefroi Buttner de Schmiedeberg	565	4
738	3	17. Les Freres Schwartz de Magdebourg	410	21
1,940	11	18. George Charles Ebersbach de Berlin	601	3
897	5	19. Spatzner et Engethard de Berlin	475	20
91,698	12	Latus	47,712	3
		Latus		11
			13,392	13
				10

Somme Arrêtée

Somme liquidée par	Pour	Capital	Intérêts jusqu'au dern. Dec. 1751
91,698 12	Transport	47,712 3 11	13,392 13 10
12,394 20 10	20. L'oper Conseiller Privé au Tribunal, et Scherenberg Conseiller de Pommérie	5,206 7 2	1,437 6
626 4	21. Scherenberg, Conseiller de Commerce Kretschamar, Paul Otto, et Gohr, Conseiller de Cour, tous de Stettin	112	24 5 2
1,179 5	22. Jean Jacques Gillet de Berlin	616 16	153 20
1,703 4	23. Chretien Grand de Berlin	1,042 12	251 4
662 8	24. Schuyler et Reyne de Berlin	303 22	106 6
1,397 19	25. La Veuve Reyne de Berlin	564 10	165 7 6
1,168 1 11	26. Les Fils de Jean Godefroi Feyereisen, et Sibert de Glogau	867 14	223 12
1,690 3	27. Sandras et Hummel de Magdebourg	1,084 13	534 18
760 20	28. La Veuve de Christophe Schneiderhantz de Berlin	556 9	158 20 10
750 14	29. Henri Godefroi Becker de Colberg	503 16	122 11 7
3,361 8 3	30. Jean Sigefroid Meurer de Berlin	210 20	191 10 7
80,027 13	33. Splittgerber et Daun de Berlin	67,969 11	9,499 10 9
12,163 4 4	34. Säturgus de Königsberg	9,623 1	2,312 2 3
618 18	35. Dieckmann & Fils de Königsberg	488 8	124 2
366 2	36. Jean Guillaume Korn de Königsberg	229 22	70 15
210,568 9 4		137,073 17 10	28,767 21 6

Somme Arrêtée

Somme liquidée par		Pour		Capital		Intérêts jusqu'au dern. Déc. 1751	
210,568	9 4	Transport	Transport	137,073	17 10	28,767	21 6
991	5 4	37. Daniel Albrecht de Königsberg	.	704	7	267	23
6,466	4 6	38. La Veuve de Schurt Liewes de Königsberg	.	5,461	0 6	1,026	10
242	10 6	39. Pierre Krittig de Königsberg	.	87	14	45	13
4,800	5	40, 41. Frederick Bischoff, et Philippe Maas de Königsberg	.	2,258	11	495	3
909	6	42. Chretien Weisbach de Potzdam	.	674	1 1	175	17 6
334	2	43. Le Juif Hertz de Potzdam	.	263	13 3	68	14 6
2,108	7 8	44. Daniel Matthies de Berlin	.	930	11	168	16 10
1,152	4	45. Jean Frederic Peters de Stettin	.	1,048	20 8	230	15 6
1,956		47. Augustin Augustinus d'Ostfrise	.	339		51	13 6
1,350		50. Onne Arend d'Ostfrise	.	1,080		270	
2,097		51. La Veuve de Jean Hallen	.	1,748		349	
4,974	8 6	55. Espanhiac et Cabrit de Königsberg	.	3,573	14	795	9 6
326	12	56. Jean Jacob Scherres de Königsberg	.	237	19	73	14
897	17 3	57. Traugott Louis Parprow de Hirschberg	.	504		339	4
310	7	58. La Veuve de Buchs et Fils, de Hirschberg	.	168	2	85	10 3
149		65. David Maquet et Fils, de Magdebourg	.	108	20	26	4
210		66. Pierre Pompera de Berlin	.	165	13	46	11
239,840	3 1	en Capital en Interets		156,486	20 4	33,283	8 1
		Total		189,770	4 5		

Et par les Raisons alleguées dans chacune des Sentences de Liquidation ci-dessous, Nous avons renvoyé les plaignans de Leurs Pretensions portées d'autre part. Soit parce qu'ils n'ont pû prouver que Leur Dommage eut été causé par des Armateurs Anglois ; Soit parcequ'ils avoient chargé leurs Marchandises sur Vaisseaux ennemis ; Soit parce que le Dommage Leur avoit été causé par l'Armée Angloise, qui etoit sur le Rhin, de quoi il n'est point question ici ; Soit parce qu'ils n'ont rapporté aucunes Pieces justificatives de Leurs Pretensions dans tout le Tems, qui a dure la Commission.

<i>Somma liquidée</i>	<i>Liquidants deboutés</i>
96 1	30. Joachim Nettelbeck de Polberg.
101 0	31. Michel Blanck de Polberg.
2,100	46. Gerd Dircks d'Ostfrise.
302	48. Jean Remmers d'Ostfrise.
157 12	49. Jede Jocken Lotting d'Ostfrise.
337	52. Zythema et Compagnie d'Ostfrise.
198 2	53. Jean Lutke de Stettin.
35 17	54. Chretien Schmid de Stettin.
60	59. Martin Sperke de Colberg.
63 20	60. Nicolas Saeve de Colberg.
338 7	61. Moll de Hagen, dans la Comté de Marck.
240	62. Feldershoff de Cleve.
63 20 9	63. Godefroi Suer de Stettin.
82 8	64. Frederick Buske de Stettin.
4,175 15 9	Summa

à Berlin, le 1^{er} de Juillet 1752.
de Fürst. Behmer Kuhn.

The summations on pp. 248-250, which are copied from the Prussian original, appear to be incorrect in some instances. The names on those pages do not always agree with those on pp. 252-261; they are given, in both cases, as in the original printed copies furnished by Prussia.

34. SPECIFICATION DES VAISSEAUX PRUSSIENS PRIS

(For. Ministers, Prussia, vol. 49)

LIT. A.

Specification des Vaisseaux Prussiens pris en pleine mer contre les règles du Droit des Gens injustement détenus, & relâchés ensuite par la Marine Angloise durant la dernière guerre, & dont les captures ainsi que les détentions ont causé des pertes & dommages à des sujets de Sa Majesté, soit pour leurs vaisseaux mêmes, soit pour les marchandises qui y étoient chargées.

Nombre des Vaisseaux.	Noms des Vaisseaux & des Capitaines.	Noms des Armateurs Anglois qui les ont pris.	Voyages, dans lesquels la prise a été faite.	Date de la prise & durée de la détention.	Noms des sujets Prussiens qui en ont souffert du dommage.	Au sujet de quoi & de quelles sortes de marchandises.
1.	La Frederique Amitié, Capit. Sprenger	Le Postillon de Topsham, Capit. Jean Morgen	De Bourdeaux à Stettin	Pris le 16. Avril 1748. détenu jusqu'au 1 Mai 1748	Törnicke & Pingel de Stettin	Au sujet de la détention du Vaisseau.
2.	Les Juneaux, Capit. Kruth	Le Prince Frederic, Capit. Norris	De Stettin à l'Orient ou à Brest.	Pris le 12. Aout. 1747. détenu 10 Mois	Vanselow de Stettin	Au sujet de la détention du Vaisseau.
3.	L'Anne Elisabeth, Capitaine Daniel Schultz	(1) Le Salamandre, Capitaine Henri Staffield (2) Le Dauphin, Capitaine Thomas Pierce	De France à Stettin	Pris le 7. Janv. 1748. détenu 6 Mois	(1) Schultz de Stettin (2) La Veuve Schroeder	(1) Pour une charge de vin & de chataignes. (2) Au sujet du Vaisseau même.
4.	La Catherine, Christine, Capit. Freder. Berend	Le Prospère, Capit. Salomon Courier	De Bourdeaux à Stettin	Pris le 5 Avril 1748. détenu 4 jours	Barthold de Stettin	Au sujet de la détention du Vaisseau.
5.	La Dame Julienne, Capitaine Martin Frest	Le Prince d'Orange, Capitaine Jean Stevenson	De Livourne à Amsterdam	Pris le 20 Janv. 1748. détenu 5. Mois	Barthold de Stettin	Au sujet de la détention du Vaisseau.

6.	Le Frederic 2, Roy de Prusse, Capitaine Chretien Schultze	Le Endeavour, Capit. Robert Crousewal	De Bourdeaux à Königsberg	Pris le 4 Avril 1748 détenu 4. Mois	(1) Saturgus Königsberg & (2) Bischoff Maas de Königsberg (3) Scherres de Königsberg	(1) Au sujet des vins & eaux de vie qu'il y avoit chargé. (2) Au sujet de la détention du Vaisseau. (3) Au sujet de vin. Au sujet de la détention du Vaisseau.
7.	Le Vaisseau au bon vent, Capit. Michel Jurianzen	Capit. Abraham Boxel	De Morlaix à Rotterdam	Pris le 5 Avril 1748. détenu 3. Mois	Dieckmann & fils de Königsberg	An sujet de la détention du Vaisseau même.
8.	Le Soleil d'or, Capitaine Jacob Ridder	Le Sakville, Capitaine Pierre Wood	De Königsberg à Bourdeaux	Pris le 29. Decembre 1747. détenu 5 Mois	La Veuve de Schurt Liewes de Königsberg	An sujet de la détention du Vaisseau même.
9.	Le de Daagerond, Capit. Martin Sperwien	Le Endeavour, Capit. Robert Crousewal	De Rotterdam à Bayonne	Pris le 26 Mars 1748. détenu 8. Mois	La Veuve de Schurt Liewes de Königsberg	An sujet de la détention du Vaisseau même.
10.	Le Frederic 2. Roy de Prusse, Cap. Chrétien Schultze	L'Eagle, Capit. Jean Bazely	De Königsberg à Bourdeaux	Pris le 16 Nov. 1746. détenu jusqu'au 17. juillet 1747	Bischoff & Maas de Königsberg	An sujet du Vaisseau même
11.	L'aigle d'or, Capitaine Onne Arends	Le Prince d'Orange, Capitaine Jean Stevenson	De Dunkerque	Pris le 24 juillet 1747. détenu 4½ Mois	Onne Arends, d'Ostfrise	An sujet de la détention du Vaisseau.
12.	Les deux freres, Capitaine Jon. Hallen	Le York, Capit. Gravenier; Le Sattasch, Cap. Jean Knyght	De Rotterdam à Rouen	Pris le 16 Avril 1748. détenu 4 Mois	La Veuve de Jean Hallen d'Ostfrise	An sujet de la détention du Vaisseau.
13.	Le jeune André, Capitaine Henri Barckhorn.	Le Mary Gallay, Capit. Pierre Oliviers	De Dublin en France	Pris le 9 Septembre 1747. détenu 8½ Mois	Espanhiac & Cabrit de Königsberg	An sujet du Vaisseau & d'une charge de tourbes.

34. SPECIFICATION DES VAISSEaux PRUSSIENS PRIS (continué)

Nombre des Vaisseaux.	Noms des Vaisseaux & des Capitaines.	Noms des Armateurs Anglois qui les ont pris.	Voyages, dans lesquels la prise a été faite.	Date de la prise & durée de la détention.	Noms des sujets Prussiens qui en ont souffert du dommage.	Au sujet de quoi & de quelles sortes de marchandises.
14.	La Dorothee Sophie, Capit. Pierre Kettelhut	(1) l'Eagle, Capit. Batzely (2) L'Yorck, Capit. Gravener	De Bourdeaux à Rotterdam	Pris le 10. Decembre 1745. détenu jusqu'au 12. Aout. 1746	L'aper Conseiller privé & Scherenberg Conseiller de Commerce de Stettin	Au sujet de la détention du Vaisseau.
15.	Les deux freres, Capitaine Augustin Augustinus	Le Koenigsfischer, Cap. Guillaume Saltern Willet	De Rotterdam à Ostende	Pris le 26 Juillet 1747. détenu jusqu'au 27 Janv. 1748.	Augustin Augustinus d'Ostfrise	Au sujet de la détention du Vaisseau.
16.	Le St. Jean, Capitaine Jean Gröse	(1) Le Prince d'Orange (2) Le Roy de Sardaigne, Cap. Iordmann	(1) De Livourne à Rotterdam (2) De Bajouë à Rotterdam	(1) Pris le 11 Dec. 1747 jusqu'au 20 Dec. 1747 (2) Pris le 30 Avril. 1748. jusqu'au 29 Mai 1748.	Jean Frederic Peters de Stettin	Au sujet de la détention du Vaisseau.
17.	Le jeune Tobie, Cap. Paul Otto	Le Corriual, Capitaine Jean Milton	De Bourdeaux à Dantzig	Pris le 15 Mai 1748. détenu 7 jours	Scherenberg Conseiller de Commerce Kretschmar Marchand. Paul Otto Cap. de Vaisseau & Cohr de Stettin	Au sujet de la détention du Vaisseau.
18.	Le Petit David, Cap. Michel Bugdahl	Le Hawke, Cap. Bukely Le Varren Galley, Cap. Roier Broun	De Bourdeaux à Dunkerque	Pris le 7 Mai 1748. détenu jusqu'au 27 Sept. 1748	Spittgerber & Dann de Berlin	Au sujet de la détention du Vaisseau & de la Cargaison de vin & d'eau de vie.

35. SPECIFICATION DES VAISSEAUX NEUTRES PRIS

(For. Ministers, Prussia, vol. 49)

LIT. B.

Specification des Vaisseaux Neutres pris & détenus injustement contre tout Droit des Gens par la Marine Angloise & relachés ensuite durant la dernière guerre & dont les captures et detentions ont causé des pertes & dommages à des sujets de Sa Majesté le Roi de Prusse, pour les marchandises qu'ils y avoient chargé, & qui ont été détenues en Angleterre, quoiqu'enfin relachées.

Nombre des Vais-seaux.	Noms des Vaisseaux & des Capitaines.	Noms des Armateurs Anglois, qui les ont pris.	Voyages, dans lesquels la prise a été faite.	Date de la prise & durée de la détention.	Noms des sujets Prussiens, qui en ont souffert du dommage	Au sujet de quoi & de quelles sortes de marchandises.
1.	Le Danois La Cécile, Capitaine Bois Swensen	Le Chesterfield, Capitaine Samuel Gilbeck	De Cette à Altona	Pris le 22 Avril 1748. détenu jusqu'au 11 Juin 1748	Palmier & le Cocq de Berlin	Pour une Charge de vins.
2.	Le Suedois le Nahring, Capit. Chrétien Tiedemann	Le Cumberland, Capitaine Henri Cooper	De la Rochelle à Bourdeaux	Pris le 13. Oct. 1747, détenu 6½ Mois	(1) Le Cocq de Berlin (2) Les freres Schwartz Magdebourg de (3) Sandrat & Hummel Magdebourg (4) Meurer de Berlin	(1) Pour 3 barriques d'indigo. (2) Pour 2 barriques d'indigo. (3) Pour de l'indigo, du Sucre & de l'Orléans. (4) Pour de l'indigo.

35. SPECIFICATION DES VAISSEAUX NEUTRES PRIS (continued)

Nombre des Vaisseaux.	Noms des Vaisseaux & des Capitaines.	Noms des Armateurs Anglois, qui les ont pris.	Voyages, dans lesquels la prise a été faite.	Date de la prise & durée de la détention.	Noms des sujets Prussiens, qui en ont souffert du dommage.	Au sujet de quoi & de quelles sortes de marchandises.
3.	La Demoiselle Jeanne, Capit. Joachim Peyn	La fortune, Cap. Gilbert Chain	De Hambourg à Cadix	Pris le 17. Mars 1747. détenu 6 Mois	(1) Mentzel de Hirschberg (2) La Veuve de Jean Martin Gottfried & gen- dre de Hirsch- berg (3) La Veuve de Euchs & fils de Hirschberg (4) Splittgerber & Daun de Berlin	(1) Pour 3 Ballots de toiles. (2) Pour des toiles.
4.	Le Suedois le Carls- haven Werft ou le Chantier de Carlsaven. Cap. Jean Holm	Le Lys, Cap. Tho- ma Knowles	De Hambourg à Cadix	Pris le 24. Décem- bre 1747. détenu 1 an	(1) Mentzel de Hirschberg (2) La Veuve de Jean Martin Gottfried & gen- dre de Hirsch- berg (3) La Veuve & fils de Godéfrô Glafey de Hirschberg (4) Hartmann de Hirschberg (5) Schober de Hirschberg	(1) Pour 3 Caisées de toiles. (2) Pour toiles. (3) Pour dito. (4) Pour dito. (5) Pour dito.

5.	Le Hambourgeois l'Anne Élisabeth, Capitaine Chrétien Mau	Le Carlisle, Capit. Guillaume Ovens	De Hambourg à Cadix	Pris le 10. Septem- bre 1746. détenu 6½ Mois	(6) Buttner de Schmiedeberg (7) Splittgerber & Daun de Berlin (1) La Veuve de Jean Martin Gottfried & gen- dre de Hirsch- berg (2) La Veuve & fils de Godefroi Glafey de Hirschberg (3) Jean Hartmann de Hirschberg (4) Splittgerber & Daun	(6) Pour dito. (7) Pour lin & fer blanc. (1) Pour toiles.
6.	Le Suedois le Gustave Prince Royal, Capit. Barthold Muhl	L'Anson, Capit. Benjamin Good- win	De Hambourg à Cadix	Pris le 27 Octobr. 1747. détenu 15 Mois	(1) La Veuve de Jean Martin Gottfried & gen- dre de Hirsch- berg (2) La Veuve & fils de Godefroi Glafey de Hirschberg (3) Hartmann de Hirschberg (4) Tietze Hirschberg (5) Cuenz Hirschberg (6) Carnzow Hirschberg (7) Splittgerber & Daun de Berlin	(1) Pour toiles. (2) Pour dito. (3) Pour dito. (4) Pour dito. (1) Pour toiles. (2) Pour dito. (3) Pour dito. (4) Pour dito. (5) Pour dito. (6) Pour dito. (7) Pour du lin.

35. SPECIFICATION DES VAISSEAUX NEUTRES PRIS (continued)

Nombre des Vaisseaux.	Noms des Vaisseaux & des Capitaines.	Noms des Armateurs Anglois, qui les ont pris.	Voyages, dans lesquels la prise a été faite.	Date de la prise & durée de la détention.	Noms des sujets Prussiens, qui en ont souffert du dommage.	Au sujet de quoi & de quelles sortes de marchandises.
7.	Le Danois le jeune Benjamin, Capitaine Henri Neuschilling	Le Prospère, Cap. Salomon Courier	De Hambourg à Cadix	Pris le 2 Juin. 1747. détenu 6 Mois	(1) La Veuve & fils de Godefroi Glaufey de Hirschberg (2) Christophle Cuentz Hirschberg	(1) Pour toiles. (2) Pour dito.
8.	Le Prince Frédéric, Capitaine Jean Hartmann	L'Anson, Capit. Benjamin Goodwin	De Hambourg à Bilbao & Bayonne De Hambourg à Cadix	Pris le 28. Mai. 1748 détenu 14 Mois Pris le 21 Sept. 1747. détenu 10 Mois	La Veuve & fils de Godefroi Glaufey de Hirschberg Jean Godefroi Buttner de Schmiedeberg	Pour des toiles. Pour des toiles.
10.	L'Hambourgeois l'Union, Capitaine Jean Struckmann	Le Cullodon, Capit. Abraham Boxel	De Bourdeaux à Hambourg	Pris le 9. Aout. 1747. détenu 3 Mois	(1) Les freres Schwartz de Magdebourg & Hummel de Magdebourg (2) Sandrat & Hummel de Magdebourg	(1) Pour du Caffé. (2) Pour du Sucre & du Caffé.
11.	le Hambourgeois le Neptune, Capit. Sander Heeren	Le Hardwicke, Capit. James Samian	De Nantes à Hambourg	Pris le 10. Aout. 1747. détenu 5 Mois	(1) Les freres Schwartz de Magdebourg & Hummel de Magdebourg (2) Sandrat & Hummel de Magdebourg	(1) Pour du Caffé. (2) Pour du Caffé du sucre & du phernambuc. Pour du Caffé.
12.	le Flembourgeois le St. Paul, Cap. Jent Hinrichsen	Le Chesterfield, Capit. Samuel Gilbec	De Nantes à Hambourg	Pris le 5 Avril 1748. détenu 14 Mois	Les freres Schwartz de Magdebourg	Pour du Caffé.

13.	La Couronne, Pierre Classen	Le Prince d'Orange, Cap. Jean Topmann	De Nantes Hambourg	à Pris le 25 Oct. 1747. détenu jusqu'au 2 Janv. 1748	(1) Eberspach de Berlin (2) Les fils de Feysesen & Siebert de Glogau	(1) Pour de l'indigo. (2) Pour dito.
14.	La Demoiselle Catherine, Cap. Wilke de Vries	Le Tartare, Capitaine Thomas Spiter	De la Rochelle à Altona	à Pris le 5 Avril 1748. détenu 7 Mois	(1) Spatzier & Engelhart de Berlin (2) La Veuve Reyne de Berlin (3) Matthüs de Berlin	(1) Pour de l'eau de vie. (2) Pour dito. (3) Pour dito.
15.	La Concorde, Capitaine Claes Eichels	Le George, Cap. Guillaume Freckbain	De la Rochelle à Hambourg	à Pris le 21 Nov. 1747. détenu 6 Mois	(1) Gillet de Berlin (2) Grand de Berlin (3) Schneiderheintz de Berlin	(1) Pour du Syrop & de l'eau de vie. (2) Pour du Syrop & de l'eau de vie. (3) Pour du Syrop.
16.	La Jeanne, Cap. Jerhard Royer Altag	Le Cullodon, Cap. Abraham Boxel	De Charente à Hambourg	à Pris le 7 Aout 1747. détenu un an	(1) Veuve Reyne de Berlin (2) Schüller & Reyne de Berlin Sandrat & Hummel de Magdebourg	(1) Pour de l'eau de vie. (2) Pour dito. Pour de l'indigo.
17.	le Hambourgeois l'amitié, Cap. Jean Quimann	Le George, Cap. Guillaume Freckbain	De la Rochelle à Hambourg	à Pris le 10 Aout 1747. détenu 3 Mois	(1) Sandrat & Hummel de Magdebourg (2) Matthüs de Berlin	(1) Pour du Caffé, du Safran & du verdet. (2) Pour des amandes
18.	Le Danois le jeune Prince Chrétien, Cap. Jean Corneille Leuwen	Capit. Robert Crousewal	De Marseille à Hambourg	à Pris le 12 Sept. 1747. détenu jusqu'au 2 Janv. 1748	(1) Beker de Colberg (2) Schneiderheintz de Berlin	(1) Pour de l'indigo. (2) Pour du vin, du vinaigre de vin & de l'eau de vie.
19.	La Demoiselle Marguerite, Capitaine Henri Bielenberg	Le Cullodon, Cap. Abraham Boxel	De Bourdeaux à Hambourg	à Pris le 29 Aout. 1747. détenu 3½ Mois	(3) Weisbach de Potsdam	(3) Pour du Caffé.

35. SPECIFICATION DES VAISSEaux NEUTRES PRIS (continued)

Nombre des Vais-seaux.	Noms des Vais-seaux & des Capitaines.	Noms des Arma-teurs Anglois, qui les ont pris.	Voyages, dans lesquels la prise a été faite.	Date de la prise & durée de la détention.	Noms des sujets Prussiens, qui en ont souffert du dommage.	Au sujet de quoi & de quelles sortes de marchandises.
20.	le Hambourgeois, le Rosier, Capit. Pierre Classen	Le Endeavour, Capit. Robert Crousewal	De Bourdeaux à Hambourg	Pris le 6 Avril 1748. détenu 3 Mois	(1) Baker de Col-berg (2) Weisbach de Potsdam	(1) Pour de l'in-digo. (2) Pour du Syrop.
21.	Le Sonderbour-geois, La Marie Sophie, Capit. Chrétien Cie-gersen	Le Carlisle, Cap. Guillaume Owens	De la Rochelle à Hambourg	Pris le 20 Mars. 1747. détenu 5 Mois	Meurer de Berlin	Pour de l'indigo.
22.	L'Anne Sophie, Capitaine Henri Horn de Wolgast	Capit. Jellers	De Bourdeaux à Königsberg	Pris le 21 Mars 1747. détenu 2 jours	Saturgus de Kö-nigsberg	Pour du vin & des Jambons de Ba-yonne.
23.	Le Dantzigeois le Hop de Dantzig, Cap. Conrad Harlach	Le Chesterfield, Capit. Gilbek	De Bourdeaux à Dantzig	Pris le 17 Aout 1747. détenu 7 Mois	(1) Diekmann & fils de Königs-berg (2) Korn de Kö-nigsberg (3) Albrecht de Königsberg	(1) Pour des pru-neaux. (2) Pour des vins.
24.	Le jeune Jean de Petersbourg, Cap. Thomas Sieters	le Duc Guillaume, Capit. Richard Gravenor. Le Dauphin, Capit. Thomas Pierce	De Bourdeaux à Hambourg	Pris le 12 Mai 1748. détenu 3 Mois	(1) La Veuve de Buchs & fils de Hirschberg (2) Weisbach de Potsdam	(3) Pour de l'in-digo. (1) Pour de l'in-digo. (2) Pour du verdet, de l'indigo & du papier. Pour eaux de vie, vins, huiles, olives, Capres, amandes.
25.	Le Gregoire de Breme, Cap. Jacob Müller	Le St. Michel, Cap. George Clarmengham	De Bourdeaux à Hambourg	Pris le 19. Mars 1748. détenu 2 Mois	Maquet & fils de Magdebourg	

26.	La jeune Cathérine, commandée par le Capit. Kupper ensuite par le Cap. Elkes Les six Sœurs de Lubeck, Cap. Pierre Zaan La Ste. Anne de Hambourg, Capit. Abraham Petersen Le jeune Eldert de Hambourg, Jasper Cap. Stuvén Le Juste Henri de Hambourg, Cap. Henri Elkes Le Danois L'Elisabeth, Capitaine Søren Petersen La Demoiselle Claire, Cap. Hermann Classen Driest L'Adolph Frédéric, Cap. Jonas Haspen	Le Cullédon, Capit. Abraham Boxel Le Cullédon, Capit. Abraham Boxel Le George, Capit. Guillaume Freckbain Un Armateur Anglois Le Cullédon, Cap. Abraham Boxel Le Cullédon, Cap. Abraham Boxel Le Roy George, Cap. Jean Hardén	De Bourdeaux à Hambourg De Bourdeaux à Lubeck De Bourdeaux à Hambourg De Rouen à Hambourg De Bourdeaux à Hambourg De Hambourg à Bourdeaux De Hambourg à Rouen De Marseille à Hambourg	Pris en Mai 1747. détenu 6 Mois Pris le 21 Oct. 1747. détenu 5 Mois Pris le 11 Aout 1747. détenu 3½ Mois Pris le 4 Mai 1748. détenu 5 Mois Pris en Juillet 1747. détenu 6 Mois Pris le 17 Sept. 1747. détenu 8 Mois Pris le 22 Juin 1747. détenu 5½ Mois Pris le 10 Avril 1748. détenu 3 Mois	Schmeiderheintz de Berlin Kritting de Königsberg Weisbach de Potsdam La Veuve Schröder de Stettin Pompera de Berlin Splittgerber & Daun de Berlin Splittgerber & Daun Le Juif Herz de Potsdam	Pour du Syrop. Pour de l'Indigo. Pour de l'eau de vie. Pour du vin. Pour des vins & de l'eau de vie. Pour du Cuivre. Pour de la Cire. Pour des fils de chevre & des Anchois.
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36. PROJET DE REPONSE AU MEMOIRE REMIS PAR
M. MICHELL

(S. P. For., *Foreign Ministers in England*, vol. 49)

A Whitehall. Le 8 Fevrier 1753.

Projet de Reponse au Memoire remis le 23 Novembre dernier,
par Mo^r. Michel, Secretaire d'Ambassade du Roy de Prusse.

MONSIEUR,

Je n'ai pas tardé à mettre devant le Roy le Memoire, que Vous m'avez présenté le 23^e de Novembre passé, avec les Pieces dont il etoit accompagné.

Sa Majesté en a trouvé le Contenu si extraordinaire, qu'Elle n'a pas voulu y faire Reponse, ni prendre de Resolution, là-dessus, avant que d'avoir fait murement examiner, tant le Memoire, que l'*Exposition des Motifs &c.*, que Vous me remites peu de Tems après, pour servir de Justification de ce qui s'etoit passé à Berlin ; Et avant que d'être, par là, en état de mettre dans Leur veritable Jour les Procédures des Cours d'Amirauté d'ici ; Afin que Sa Majesté Prussienne, et tout le Monde, fut informé au juste de la Regularité de Leur Conduite ; dans laquelle, elles paroissent avoir suivi la seule Methode, qui ait jamais été pratiquée chez les Nations, où des Disputes de cette Nature ont pu arriver ; et s'être conformées exactement au Droit des Gens, qui est universellement reconnu comme Regle unique, dans des Cas pareils, lorsqu'il n'est rien Stipulé au contraire, par des Traités particuliers, entre les Puissances interessées.

Cet Examen, et la pleine Connoissance des Faites [*sic*], qui en a resulté, feront voir, si clairement l'Irregularité du Procédé des Personnes, à qui cette Affaire a été renvoyée à Berlin ; Que l'on se promet de la Justice, et du Discernement, de Sa Majesté Prussienne, qu'Elle en sera convaincue, et revoquera l'Arret qu'Elle a mis sur les Capitaux assignés sur la Silesie ; du Payement, desquels Elle s'est chargée envers l'Imperatrice Reine ; Et dont le Remboursement a fait un Article formel des Traités, par Lesquels la Cession de ce Duché a été faite.

J'ai, donc, les Ordres du Roy, de Vous envoyer le Rapport, qui a été fait à Sa Majesté sur les Pieces susmentionnées, par Le Chevalier Lee, Juge de la Cour Primatiale ; Le Docteur Paul, Avocat General du Roy aux Tribunaux de Droit Civil ; Le Chevalier Ryder, Procureur General, et Mr. Murray, Solliciteur General, de Sa Majesté. Ce Rapport est fondé sur les Principes reçus du Droit des Gens, et reconnus par les Autorités les plus respectables chez toutes les Nations. Aussi Le Roy ne doute point, qu'il ne produise l'Effet désiré. Les Points, sur lesquels toute cette Affaire roule, et qui sont decisifs, sont,

1^{mo}. Qu'on ne prend, ni ne peut prendre, Connoissance des Affaires de cette Nature, que dans les Tribunaux de la Puissance, chez qui la Saisie se fait ; Et, par conséquent, qu'il est contraire à la Pratique notoire de toutes les Nations, dans des Cas semblables, d'ériger des Cours, ou des Jurisdictions Etrangères, pour en juger ; Procédé, par conséquent, qu'aucune Nation ne peut admettre.

2^{do}. Que ces Cours, qu'on appelle généralement des Cours d'Amirauté, et qui comprennent, tant Les Cours Inferieures, que Les Cours d'Appel, decident toujours, uniquement, selon le Droit des Gens universel ; Excepté dans Les Cas, où il y a, entre Les Puissances intéressées, des Traités particuliers, qui ayent changé les Dispositions du Droit des Gens, ou qui s'en ecartent.

3^{io}. Que Les Decisions, dans les Cas dont on se plaint, paroissent, par le Rapport ci-joint, avoir été formées uniquement sur la Regle prescrite par le Droit des Gens ; Laquelle Regle est clairement établie, par l'Usage constant des autres Nations, et par l'Autorité des plus grands Hommes.

4^{to}. Que, dans le Cas dont il s'agit, on ne peut pas seulement pretexter aucun Traité, qui ait changé cette Regle, ou en vertu duquel Les Parties pourroient reclamer des Libertés, que le Droit des Gens ne Leur donne point.

5^{to}. Que, comme il n'y a, dans le Cas present, ni juste Grief, ni la moindre Raison à alleguer, pour pouvoir dire, que la Justice ait été déniée, après qu'elle a été regulierement demandée ; Et que, dans la plupart des Cas, dont on se plaint, c'est les Plaignans euxmêmes qui ont negligé les Mesures seules convenables pour se la procurer ; Il ne peut, par Conséquent, y avoir aucune juste Cause, sur laquelle des Reprises puissent se fonder.

6^{to}. Que, quand même les Represailles pourroient se justifier par les Regles connus, et Generales, du Droit des Gens ; Il paroît, par le Rapport, et même par des Considerations, qui doivent se presenter à tout le Monde, Que des Capitaux, dûs aux Sujets du Roy par l'Imperatrice Reine, et assignés par Elle sur la Silesie ; du Payement desquels Sa Majesté Prussienne s'est chargée, tant par le Traité de Breslau, que par celui de Dresde, en Consideration de la Cession de ce Païs ; Et qui, en vertu de cette même Cession, auroient dû être pleinement, et absolument, acquittés en l'Année 1745, C'est à dire, une Année avant qu'aucun des Faits, dont on se plaint, soit arrivé ; Ne pouvoient, ni en Justice, ni en Raison, ni selon ce qui se pratique constamment entre toutes les Puissances les plus respectables, être Saisis, ou Arretés, par Represailles.

Les differens Faits, qu'on vient de detailler, sont si clairement établis, et prouvés, dans le Rapport ci-joint ; que Je ne

repeterei pas les Raisons particulieres, et Les Autorités, qui sont alleguées, pour les appuyer, et pour justifier la Conduite, et Les Procedures, dont il est question. Le Roy se persuade, que ces Raisons suffiront aussi pour determiner le Jugement de tout le Monde impartial, sur le Cas present.

Il est important d'observer sur cette matiere, Que la Dette sur la Silesie fut contractée par feu l'Empereur Charles Six ; qui s'engagea, nonseulement de remplir les Conditions enoncées dans le Contrat ; mais encore, de donner aux Creanciers telle autre Sureté ulterieure, qu'ils pourroient raisonablement demander à l'avenir. Cette Condition auroit été très mal executée, par un Transport de cette Dette, qui eût donné pouvoir à un Tiers de la Saisir, et confisquer.

Vous ne serez pas surpris, Monsieur, que, dans une Affaire, qui a si fort alarmé toute la Nation, qui est en droit de reclamer une Protection, que Le Roy ne sauroit se dispenser de Lui accorder ; Sa Majesté ait pris du Tems, pour faire examiner les Choses à fond ; Et qu'Elle se trouve obligée, par les Faits, d'adhérer à la Justice, et à la Legalité, de ce qui s'est passé dans Ses Tribunaux, et de ne pas admettre les Procedés Irreguliers, qu'on a tenus ailleurs.

La derniere Guerre a fourni nombre d'Exemples, qui auroient dû convaincre toute l'Europe, combien les Tribunaux d'ici rendent Justice scrupuleusement en de pareilles Occasions. Ils ne se sont pas même prevalus d'une Guerre ouverte, pour saisir, ou retenir, les Effets de l'Ennemi, lorsqu'il a paru, que ces Effets avoient été pris injustement, avant la Guerre. Cette Circonstance doit faire honneur à Leurs Procedures, et montrera, en même tems, qu'il etoit aussi peu necessaire, que peu convenable, d'avoir Recours, ailleurs, à des Procedures absolument inusitées.

Le Roy est bien persuadé, que ce qui s'est passé a Berlin n'a été occasioné, que par les Informations mal fondées, qu'on a données, de ces Affaires, à Sa Majesté Prussienne, Et ne doute nullement, que lorsqu'Elle Les aura envisagées dans Leur vrai Jour, Sa Disposition naturelle à la Justice, et à l'Equité, ne La porte à redresser d'abord les Demarches, que ces mêmes Informations ont occasionnées, et à achever le Payement du Reste des Dettes assignées sur la Silesie, conformément à Ses Engagements à cet egard.

Je suis, avec bien de la Consideration

Monsieur,

Vôtre très humble, et
très obeissant Serviteur,

HOLLES NEWCASTLE.

[Endorsed] Projet de Reponse au Memoire de Mons^r. Michel &c^s., A Whitehall. Le 8 Fevrier 1753.

37. COUNCIL AT NEWCASTLE HOUSE .

*(S. P. For., Foreign Ministers in England, vol. 49)*Newcastle House, February 6th, 1753.

Lord Arch. Bp. of Canterbury	Duke of Dorset [Lord Lieut: of Ireland]
Lord Chancellor [Hardwicke]	Marquess of Hartington [Master of the Horse]
Lord President [Granville]	Earl of Holderness [Secretary of State]
Lord Steward	Lord Anson [First Lord of the Admiralty]
Lord Chamberlain	Mr. Pelham [First Lord of the Treasury]
Duke of Argyll	Duke of Newcastle [Secretary of State].

Their Lordships, having, by the King's Order, fully consider'd the Report of Sir George Lee, Dean of the Arches; And of His Majesty's Advocate General; Attorney General; And Solicitor General; Upon the Memorial, and Sentence of the Prussian Commissioners, presented to the Duke of Newcastle, on the 23^d of November last, by Mons^r Michel, Secretary to the Embassy of the King of Prussia; And a printed Book, deliver'd, also, by Mons^r Michel, to the Duke of Newcastle, on the 13th of December; Entitled, *Expositions des Motifs, &c.* As likewise, the Dra^t. of a Letter, proposed to be wrote, by the Duke of Newcastle, to Mons^r Michel, inclosing a Copy of the said Report, in Answer to the said Memorial, and *Exposition des Motifs, &c.*: Are humbly of Opinion, that the said Report contains a full, and satisfactory Answer to the Same; And that the Letter, proposed to be wrote by the Duke of Newcastle, (If His Majesty is pleased to approve it,) should be accordingly given, with a Copy of the said Report, to Mons^r Michel, the Prussian Secretary, And that They should be forthwith printed and published.

Their Lordships are, also, further humbly of Opinion, that the said Letter, and Report, should be forthwith sent to the King's Ministers, residing in the Several Foreign Courts; With Directions, to communicate them to the Ministers of the respective Courts.

That particular Instructions should be sent to the Earl of Albemarle; that He should deliver Copies of Both, to Mons^r St. Contest; And that He should explain to Him, the Nature of the Case, and the Injustice, and Violence, of the Proceedings

of the King of Prussia ; And the Moderation of the King's Answer ; But that, at the same Time, the Earl of Albemarle should acquaint Mons^r St. Contest ; that, if, notwithstanding the clear Light, in which this Affair is now put, and the evident Injustice of the King of Prussia's Proceedings ; His Prussian Majesty should still persist to retain the Money, due to the King's Subjects, on the Silesia Loan ; The Payment of which the King of Prussia has taken upon Himself, in consideration of the valuable Cession of the Dutchy of Silesia, the Validity of which Cession may be greatly affected by it ;—It is obvious to foresee the evil Consequences, which will necessarily arise from it.

That the King makes this early Communication to His Most Christian Majesty, as a Friend to Both Parties, and to the Preservation of the Publick Peace : And that His Majesty doubts not, but, from the Consideration of Justice, and Friendship ; the French King will use His good Offices with the King of Prussia, to comply with His solemn Engagements, to discharge the Debt, due to His Majesty's Subjects, on the Silesia Loan ; Which should have been done, by the express Conditions of the Contract, one Year, before any of these Facts happen'd, upon which His Prussian Majesty has thought proper to retain the Money and Refuse the Payment.

That a proper Communication of this Affair should, also, be made to the Court of Spain.

That Instructions should be sent to the King's Ministers, at Vienna, Petersbourg, and the Hague ; Directing them, in like Manner, to deliver Copies to the respective Ministers of those Courts.—To represent the extraordinary Proceedings of the King of Prussia, upon this Occasion ; And the amicable Endeavours, which His Majesty is using, to induce His Prussian Majesty, to discharge the Debt, due to the King's Subjects, upon the Silesia Loan.

And, particularly, to shew the Austrian Ministers, how essentially the Empress Queen is concern'd in this Question ; And that, in Case the King of Prussia should persist ; It might not be improper for the Court of Vienna, to give His Prussian Majesty to understand, that they look upon the Discharge of this Debt, as an Essential Obligation of the Treaties of Breslau, & Dresden.

And that the Ministers of the Three last mentioned Powers should be acquainted ; That, if, contrary to Expectation, Any Attack should be made upon His Majesty ; the King doubts not, but that He may depend, in that Case, upon the immediate Performance of their Defensive Engagements to His Majesty : Which, however, the King hopes, will not happen ; And which His Majesty is determin'd, to do Every

thing, in His Power, to prevent; As far, as is consistent with the Justice, which the King owes to His Subjects; And with the Honor, and Dignity, of His Crown.

[*Endorsed*] *Minute*. Newcastle House Febr^y 6th 1753.

38. NEWCASTLE TO KEITH

(*S. P. Germany (Empire)*, vol. 191)

Mr. Keith.

Whitehall, Febr^y 13th, 1753.

SIR,

I am persuaded, that the Court of Vienna are, already, Prussian
Memor^l. informed of the Extraordinary Proceedings of the King of Prussia, upon some pretended Complaints of Justice not having been done here to His Subjects, upon the Seizure, during the late War, of some Ships, or Effects, which went under Their Names, & were claimed by Them. Upon which His Prussian Majesty has thought proper to erect a Court of His own, To judge, and determine the Justice of those Claims; And, in Consequence of Such Determination, has detained, & appropriated to that Use, The Remainder of the Debt due to the Creditors of the Silesia Loan; The Payment of which Debt the King of Prussia has taken upon Himself, by the most solemn Engagements to the Empress Queen, stipulated in the Treaties of Breslau, and Dresden; by which Treaties the Cession of The Dutchy of Silesia is made to His Prussian Majesty.

This Proceeding was communicated, in form, to The King, by a Memorial, which M^or. Michel, Secretary of the Embassy to the King of Prussia, delivered to me on the 23^d of Novem^r last, and was pretended to be supported by a Printed Paper, entitled *Exposition des Motifs &c.* which M^or. Michel, also, gave me, the 13th of Decem^r following. Tho' I conclude, You have long since had Both Those Pieces in Print, yet, for the greater Certainty, I enclose them to you.

Tho' this Proceeding appeared, at first Sight, both new, and unjust, yet His Majesty was determined to return no Answer to the Memorial, till The whole Case was set in a true Light; That the King of Prussia, and the whole World, might see, The Justice, and Regularity, of The Proceedings of the Courts of Admiralty, and Appeal, here, and consequently The Novelty, Injustice, and Violence, of the Steps, which have been taken at Berlin.

This whole Affair has been refered to Sr. George Lee, Dean of the Arches, and Judge of the Prerogative Court, and to Dr. Paul, His Majesty's Advocate General, in The Courts of Civil Law; and to Mr. Attorney, and to Mr. Solicitor General:

And It appearing, by Their Report, That there is not the least Colour for saying, That Every Thing has not been done here, according to the Established Rule of the Law of Nations, allowed, and practised in all Countries, where Disputes of this Kind can come in Question ;—And, Therefore, That There is not the least foundation for Reprizals ; And it appearing also, by The Report, That if Reprisals could have been legally made ; The King of Prussia had no Right to seize, and detain, The Money due, on The Silesia Loan, for that purpose ; His Majesty was pleased to order me to return an Answer to Mor. Michel, annexing to it The Report abovementioned. Which, having been, since, printed, & published, by The King's Order ; I send You a Printed Copy of it ; which It is His Majesty's Pleasure, That You should deliver to the Austrian Ministers, with Mor. Michel's Printed Memorial, & the *Exposition des Motifs* ; If they have not had them before.

Thus far
Mutatis
Mutandis
was sent,
as a Cir-
cular,
to the
several
Ministers.

It is impossible for me to add any Thing, to what is contained in The Report, to prove The Justice of The Proceedings here, and consequently, The Violence & Absurdity, of Those at Berlin.]

After You have made Yourself Master of the Report, You will represent the Case in it's true Light to the Austrian Ministers. You will observe to Them, That notwithstanding The extraordinary Manner in which The King of Prussia has acted upon This Occasion, His Majesty has proceeded with the utmost Calmness, and Moderation ; The King desiring most earnestly, That His Prussian Majesty may be convinced by the Force, and Strength, of the Arguments ; and by the Salutary Advice, which The King hopes He will receive from His Allies, That he has been misinformed ; That the Steps, which He has taken, have been both irregular, and without Foundation ; And That, in Consequence of it, His Prussian Majesty will discharge The remaining Part of the Debt on the Silesia Loan, according to His Solemn Engagements, taken, by the Treaties of Breslau, and Dresden.

After You have explained This Affair fully to the Austrian Ministers ; It may not be improper, That You should have an Audience of Their Imperial Majesties. You will acquaint Them That The King's Confidence and Regard to Them, and Dependance upon Their Friendship, have induced His Majesty, to make This early, and ample Communication to Them of This most Extraordinary Transaction ; That the King doubts not, but That They will see, from The Papers, which You have left with Their Ministers, The Injustice and Violence, of it : That His Majesty hopes, The King of Prussia Himself will be convinced of The Mistake which He may have been under ; And will revoke His Arrêt, or Detention of The Money due on the

Silesia Loan : That Their Imperial Majesties may see, by The Moderation of the King's Proceedings, That His Majesty has, and will continue to use His utmost Endeavours to induce the King of Prussia, by amicable Means, To redress The Injury done to His Majesty's Subjects ; And thereby prevent any ill Consequence to the Publick Peace : And That, for That Purpose, The King has ordered The Earl of Albemarle to make the proper Representations at the Court of France ; And We have already, by His Majesty's Command, talked to the Duc de Mirepoix, to shew him The Violence of this Proceeding ; The ill Consequences which It might have, and Our firm Persuasion, That The Court of France would not suffer The King of Prussia to begin a War, in Support of Such a Crying Injustice, as This is. And It is impossible, to talk more reasonably upon The Subject, Than The French Ambassador did, or to seem more convinced of the Truth of What We said, Than He was.—And, if His Court thinks in the same Way, and acts accordingly ; There is no Reason to apprehend, That the King of Prussia will venture, to drive Things to Extremities, on This Occasion.

You will particularly shew the Austrian Ministers, how essentially the Empress Queen is concerned in this Question ; As The Money was lent to the late Emperor Charles the 6th, And the Engagement of Payment from the King of Prussia is to Her Imperial Majesty. By which the Empress Queen is so far connected with the King, in this Affair, That His Majesty doubts not but She will take such Measures, as shall be jointly agreed upon, to induce The King of Prussia to recede from His present Resolution ; And, particularly, In Case His Prussian Majesty should persist, notwithstanding The Proofs, which are now given, of the Injustice and Irregularity of His Proceedings ; That Then, It may not be improper for The Court of Vienna to give The King of Prussia to understand, That They look upon His Discharge of that Debt, as an Essential Obligation of the Treaties of Breslau, and Dresden.

We must now wait to see, what Effect this Answer will have upon His Prussian Majesty, and what Steps The Court of France will take with Him, to prevent the Consequences which may attend Such Acts of Violence, and Injustice ; Which, otherwise, if adhered to, may affect The Publick Peace, and engage France in a General War, sooner Than probably They may wish ; And that Consideration will have it's Weight.

The Court of Vienna may be assured, That The King will do Every Thing, in His Power to put an amicable End to This Affair ; as far as is consistent with The Justice which His Majesty owes to His Subjects, and with the Honour, and Dignity, of His Crown.

But as there is no Accounting for the future Behaviour of a Prince, who is capable of Acting as the King of Prussia has done, *even* in This Instance ; It is not Impossible, (tho I hope highly Improbable) That His Prussian Majesty may be deaf to Reason, and think of Supporting One Injustice, by Another, still, if possible, more outrageous ; And may, therefore, from unjustly seizing the Effects of Others at home, proceed to *Voyes de fait* Abroad ; and make Some Attack upon His Majesty's German Dominions ; because The King cannot, and will not, sacrifice The Rights of His Subjects of England to The King of Prussia's Arbitrary Determinations : If, contrary to All Expectation, This should happen, His Majesty is persuaded, from the known Honour, Justice, and Friendship, of Their Imp^l Majesties, and from the punctual Execution of Their Engagements, That The King may depend upon Their ready, & immediate, Assistance ; And His Majesty doubts not, but that, as such a Proceeding would justly raise the Indignation of This Country, It would do so with All His Majesty's Friends, and Allies ; And That The King might assure Himself of Their effectual Support upon such an Occasion. But These are Extremities, which I fling out to You, only, as possible ; The Apprehension of which ought to engage All Powers, who are really concerned for The Preservation of the Publick Peace, to do Their utmost, by All Amicable Means, to prevent Them.

As You will have, at least, Two Couriers with You, when This Messenger arrives ; I should be glad, that You would redispach One of Them as soon as possible, with an Account of what You shall have done, in the Execution of These Orders ; With The Sentiments of the Court of Vienna upon this Important Occasion ; And with the best Judgment, which You shall be able to make, of The Assistance, which His Majesty may, in case of Events, expect from them.

I should also be glad to know The Effective Number of Their Army in Germany ; with a particular Account of Their present Quarters : But this last Information You will get privately, without making any Instances to the Ministers for it.

I am, &c^a.

HOLLES NEWCASTLE.

[*Endorsed*] By Pollock.

39. KEITH TO NEWCASTLE

*(S. P. For., Germany (Empire), vol. 191)*Vienna, March 1st, 1753.

MY LORD,

With regard to the King of Prussia's late Behaviour, I was not satisfied with shewing them the obligation their Court lay under, of fullfilling their Engagements to the King, in Case his Prussian Majesty should persist, in his unjust & Violent Proceedings, but endeavoured to convince them, how much their own Interest, and safety was concerned, in supporting His Majesty upon this Occasion. Count Ulfeld & C. Coloredo (I mention them together tho' I saw them separately, to save the Trouble of Repetition) listened with attention to what I said, and seemed not to disapprove of my Reasoning, and they promised to make a faithful Report of the whole to their Imp^l Majesties respectively, and give me an Answer, as soon as possible, upon both Points.

When we had done talking of the Affairs of Modena, the Conversation turned upon the Second Part of Your Grace's Letter relative to the King of Prussia's extraordinary & unaccountable Behaviour; and the two Chancellors informed me that having made a Report of the Communication I had made to them upon that Subject, they had Orders from the Emperor & Empress Queen to assure me, that their Imp^l Majesties, fond of every Opportunity of shewing their great Regard and Sincere Friendship for the King, would upon all Occasions fullfill with the greatest Exactness, all the Engagements they lay under to his Majesty, both in Quality of King, and Elector; in the firm Persuasion, that His Majesty, on his Side, was equally ready to perform his Engagements towards them, in both the abovementioned Qualities.

I am &c.

RO^T. KEITH.

40. KEITH TO NEWCASTLE

*(S. P. For., Germany (Empire), vol. 191)*Vienna, March 9th, 1753.

MY LORD,

I informed Your Grace, in my Letter of the 1st Instant^t that Pollock, the Messenger, arrived here, on Sunday the 25th of February, with Your Grace's Dispatches of the 13th of that

Month ; and I am now to apprise You of the Manner in which I have endeavoured to execute the important Orders, contained therein.

I began, the next Morning, by sending Monsieur d'Ulfeld the Copy of Your Grace's Answer to Monsieur Michel, the Prussian Secretary, with the Report annexed, and the Day after, I waited upon that Minister myself, and likewise upon Count Colorado ; on Friday, I had my Audience of the Emperor, and, on Sunday, of the Empress Queen.

As the Substance of what passed in my several Conversations with Their Imperial Majesties, and their Ministers, was pretty near the same, in Place of entering into a Detail of each, it will be sufficient, to give Your Grace an Account of that which I had with the Empress, as it was the most particular of the whole, as well as the most interesting.

As I thought it of Consequence, to give Her Majesty a just Idea of the Matter, I began my Conversation with giving Her a succinct Relation (: from Your Grace's Letter :) of every Step that had been taken in the Affair, from which, and from the Papers I had left with Her Ministers, I said, I hoped, Her Majesty would be fully convinced of the Injustice of the King of Prussia's Pretensions, of the Irregularity and Violence of his Proceedings, and of the Calmness, and Moderation, with which His Majesty had acted throughout the whole Course of this Business. I then insinuated to the Empress Queen, how essentially She was connected with the King, in this Affair, and I informed Her of the thorough Persuasion, in which His Majesty was, that She would make no Difficulty, to take such Measures, as should be jointly agreed upon, to induce His Prussian Majesty, to recede from his present Resolution, and I endeavoured to shew the Empress, how proper it would be, if that Prince persisted in it, that the Court of Vienna should give him to understand, that they looked upon his Discharge of that Debt, as an essential Obligation of the Treaties of Breslau, and Dresden.

I said, I had Orders, to assure Her Majesty, that the King had, and would continue to use his best Endeavours, as far as was consistent with the Justice His Majesty owed to His Subjects, and with the Honour, and Dignity of His Crown, to put an amiable End to this Affair, and that the King hoped, from the Strength of the Reasons given, that His Prussian Majesty, Himself, might be convinced of the Mistake he had lain under, and would revoke his Detention of the Money, due on the Silesian Loan, and thereby prevent any ill Consequences to the publick Peace ; and that, for that Purpose, the King had ordered Lord Albemarle, to make the proper Representations to the Court of France, and that His Majesty's Ministers

had already, by the King's Command, talked with the Duc de Mirepoix, to shew him the Violence of this Proceeding, the ill Consequences it might have, and their firm Persuasion, that the Court of France would not suffer the King of Prussia to begin a War, in Support of such a crying Injustice ; that it was impossible, to talk more reasonably upon the Subject, than the French Ambassador had done, or to seem more convinced of the Truth of what our Ministers had said, than he was ; so that, if his Court thinks in the same Way, and acts accordingly, there was no Reason to apprehend, that the King of Prussia would venture to drive Things to Extremity, upon this Occasion.

I said however, that, as there was no accounting for the future Behaviour of a Prince, capable of acting, as the King of Prussia had done in this Affair, it was not impossible, but he might be deaf to Reason, and think of supporting one Injustice by another still greater, in proceeding to *voies de fait*, and by making some Attack upon His Majesty's German Dominions, because the King could not, and would not, sacrifice the Rights of His Brittish Subjects, to His Prussian Majesty's arbitrary Proceedings : That, if, contrary to all Expectation, that should be the Case, His Majesty was convinced, from the known Honour, Justice, and Friendship, of Their Imperial Majesties, and from the punctual Execution of their Engagements, that the King might depend upon their ready and immediate Assistance, and that, as His Majesty was sure, such a Proceeding would justly raise the Indignation of the Brittish Nation, he did not doubt, but it would do so, with all His Majesty's Friends, and Allies, and that the King might assure Himself, of their effectual Support, upon such an Occasion : I concluded with saying, that as the King of Prussia's Behaviour, upon this, and many other Occasions, shewed plainly, that he wanted to raise new Troubles, in Order to make his own Advantage of them, the Interest as well as Honour of Their Imperial Majesties were engaged, to join in Opposition to his ambitious Views, and that the only Way to do it effectually, was, for all the Allies, to act in the greatest Harmony and Union for that Purpose.

The Empress heard me with great Attention, and when I had done, Her Majesty answered, that, from the Account I had given of the Affair, and from Your Grace's Answer, and the Report annexed, which, She said, were extremely, well written, and with great Strength of Reason, *n'ayant rien de trop haut, ni de trop bas*, She was thoroughly convinced of the Injustice of the King of Prussia's Pretensions, as well as of the Violence, and Irregularity of his Proceedings ; The Empress said, She approved extremely of the Moderation, and Wisdom,

with which His Majesty had acted, and that it was to be hoped, from that, and the strong Reasons given in the Answer, that His Prussian Majesty might be brought to revoke the unjust Detention of the Residue of the Silesian Loan; but that, if, contrary to all Expectation, the King of Prussia should proceed to further Violence, by attacking His Majesty's German Dominions, the King might depend upon their fulfilling all their Engagements, with the utmost Exactness, and She referred me, upon that Point, to the late Declarations Her Ministers had made to me, by Her Order (: which I transmitted to Your Grace in my Letter of the 1st Instant :) which, She said, was such, as, She hoped, I had Reason to be thoroughly satisfied with, and the more, that I could see plainly, it proceeded from the Fullness of their Hearts, the Emperor having given me Assurances to the same Purpose, in my Conversation at the Ball, without Hesitation, and without any previous Consultation with His Ministers.

Her Majesty said, that, as to what I had insinuated of their talking to the King of Prussia, in the Manner proposed, they had not hitherto had a proper Opportunity of doing it, as that Prince had never mentioned the Thing, either to their Minister at Berlin, or by his Ministers here, which, She flattered Herself, was owing to the Opinion that Prince had, of their being too much the King's Friends, to approve of such Proceedings. That, as to what I had mentioned of her entering into such Measures, as should be jointly concerted, She was very ready to do it, and that, indeed, She thought it absolutely necessary for our Common Safety, that new Measures should be taken; for that She could not help thinking, that the obligations we lay under, at present, towards one another, though strong in themselves, were not sufficient for the Purposes, proposed by them, and that the wisest Thing that could be done, at this Juncture, would be, not only to consolidate, but to extend them farther, and that She believed, a Method might be proposed for that Purpose, which would not only put us in a Condition, to defend ourselves, if attacked, but might even be the Means of preventing the King of Prussia from attempting any Thing, to disturb the Publick Peace. The Empress added, that, for her Part, She wished for nothing so much, as the Continuance of the Publick Tranquillity, and would never be the Aggressor in disturbing it, but that She had done her best, to be in a Condition to defend Herself, if attacked, and that She had the Vanity to think, that the Arrangements She had taken, were the greatest Security the Allies had upon the Continent. Her Majesty concluded the whole by saying, that She could not disapprove of the Application, made by His Majesty, to the Court of France, but that She was afraid, that

ambitious Court might endeavour to take advantage of it, in setting themselves up for Arbiters in this Affair, which, if it should happen, could not fail of giving them new Lustre, and an addition to their Credit in Europe, which was already but too great.

The Empress stopping here, I replied, that I should make a faithfull Report to Your Grace, of all Her Majesty had been pleased to say, upon this Occasion ; that the Readiness with which Their Imperial Majesties had declared their friendly Intention towards the King, could not fail of being highly agreeable to His Majesty ; That, as to what She had thought proper to insinuate, of entering into new Measures with His Majesty, for the Common Safety, I did not doubt, but it might be gone into, as soon as the important Affair of the Election of a King of the Romans, which was to be considered as the Basis of the whole, should be carried into Execution ; and that, as to the bad use, which She feared, France might make of the Application, made to her, upon this Occasion, there was, in my Opinion, nothing of that Kind to be apprehended, as the Application had been made in a Shape, and with no other View, than, to shew them the ill Consequences of such Acts of Violence, and Injustice, which, if adhered to, might affect the Publick Peace, and engage them in a general War, sooner than they might wish for, and that it was likely that Consideration might have it's Weight with them ; and that Her Majesty might plainly see, from the Language held by the Earl of Albemarle, in a Conversation he had lately had with Monsieur de St. Contest, and which I had informed her Ministers of, that the Court of France had not the least Reason to imagine, that we would allow them any Superiority, or Advantage, in any Degree. Her Majesty seemed to acquiesce in these Reasons, and I own, upon the whole, I was not sorry to discover a Jealousy in the Empress, with Regard to France, and I threw in several Hints in the Conversation, occasionally, which, I thought, might serve, to augment rather than diminish it.

This is, I think, pretty near the Substance of all that passed in my Audience of the Empress Queen ; my Conversation with the Emperor, was more general, but His Imperial Majesty was no less warm, than the Empress, in his Expressions of Friendship towards the King, and of his Readiness to fulfill all his Engagements.

The Ministers, Count Ulfeld, and Count Colorado, in some subsequent Conversations I had with them, confirmed all the Empress had said to me, and by what they flung out, I found, they have now under Deliberation, a Plan of some new Concert, which will, when ripe, be communicated to His Majesty ;

both those Ministers expressed their Approbation of the Answer, and Report, in the strongest Terms.

I am &c.

Ro^r. KEITH.

[Endorsed] R. 24th, by Pollock.

41. NEWCASTLE TO KEITH

(S. P. For., *Germany (Empire)*, vol. 191)

Mr. Keith.

Whitehall, March 9th, 1753.

SIR,

You will have received, by My Letter, of the 13th of February, by Pollock, The Messenger, very full Instructions for Your Conduct, with The Court of Vienna, upon The violent, & extraordinary Proceedings of The King of Prussia.

I received, on Wednesday last, by The Flanders Mail, Your Letter of The 21st of last Month. The assurance, which The Emperor gave You, of Their firm Resolution to fulfill Their Engagements to His Majesty, either as King, or Elector, give great Reason to hope, That You will receive very Satisfactory Answers to the Instances, which You were directed to make, by my Letter, of the 13th past, abovementioned. We have yet no Answer from France; But Mo^r. de St. Contest received The Communication extremely well, & expressed Himself in a very satisfactory Manner upon it.

The King has Advices, That The King of Prussia is buying up Artillery Horses, and getting together Provisions of All kinds, upon The Frontiers of The King's Country, and That They talk of Encampments in that Neighbourhood. There are also Accounts, That His Prussian Majesty has purchased The Pretensions of the Family of Anhalt, on The Dutchy of Saxe Lawenburg, and that He actually intends to make an Attack upon that Part of The King's Dominions. Tho' These Demonstrations may be easily imagined to be intended chiefly to intimidate The King from continuing His Support, & Protection, to His Majesty's Subjects of Great Britain, in the Recovery of Their Properties, unjustly detained, and invaded; They may also be with a real View to make an Attack upon The King's German Dominions, in revenge for the Protection, & Support, given by His Majesty to His Subjects of Great Britain. The King has therefore thought proper to direct me to send This Messenger to Moscow, with The inclosed Letter to Col^o. Guy Dickens, which I leave open for Your Perusal, & of which you may take a Copy.

You will acquaint the Austrian Ministers with the Substance of it ; And you will desire, That This Messenger may carry Orders to Gen^l. Pretlack, to assist, & support, the Instances, which Col^o. Guy Dickens is directed to make. I know very well, That The Austrian Ministers will press, That an immediate Subsidy may be given to Russia. It is to no Purpose, to dwell upon that Subject. The King has not thought it advisable, in the present Circumstances, to grant a Subsidy, in all Events ; But You will see, how near The King is willing to come to it ; and That His Majesty proposes, That The Subsidy should begin from The Day, that The Troops are to march out of Their present Quarters. If The Court of Vienna will not assist The King, in bringing This about, in This Shape ; They may expect to have the whole Weight of Prussia, and, perhaps, of France also, upon Them, and The Empress of Russia, without His Majesty's having it in His Power hereafter to assist Them either with Money, or Troops.

If, as The King hopes will be the Case, The Peace is preserved ; There will, then, be no Occasion for The Russians, or, consequently, for any Subsidy. If The King of Prussia takes any Steps to break the Peace, in Consequence of the Violences already began against His Majesty's Subjects of Great Britain ; Then, The King is willing to give a sufficient Subsidy, to The Russians, and then, only, it can be wanted. For, as the Russian Troops are, now, quartered just in the places, where They will be wanted, no previous Expenditure is necessary for Their March thither ; And being ready, & upon the Spot, They may be soon put in Motion, when once Notice is given.

His Majesty would have You ask an Audience of The Emperor, immediately upon The Receipt of This Letter ; and You will return The King's Thanks to His Impl. Majesty, for The Assurances He gave you, of Their firm Resolution to perform Their Engagements to His Majesty, either as King, or Elector. You will, then, acquaint The Emperor, with The Substance of The Orders sent to Col^o. Guy Dickens ;—You will desire, That General Pretlack may be directed to join with Col^o. Guy Dickens ; And You will submit it to His Impl. Majesty, whether It might not be proper, That The Austrian Troops should be so disposed, as, in Case of an Attack, from The King of Prussia, on His Majesty, a very considerable Diversion may be immediately made by The Empress Queen's Troops : And You will learn The Opinion of Their Impl. Majesties, what further Measures should be jointly taken by The King, & The Two Empresses, in Case All the joint Endeavours, for the Preservation of the Peace, should, thro' the Ambition of The King of Prussia, and His Influence over France, or from The Views of Both, to bring All Europe under

Their Subjection, prove ineffectual. As This is to be feared, Nothing ought to be left untried, that may prevent It ; And what The King is now proposing, is Only from an Apprehension, or, rather, a Possibility, that Those Endeavours may not succeed.

As His Majesty thought no Time was to be lost, in knowing, what Assistance He might expect from Russia, in Case of an Attack ; The King would not have The Departure of This Messenger any longer delayed ; And I must beg, That You would forward him to Col^o. Guy Dickens, with the utmost Expedition, As soon as you can get such Informations, as you may think proper to send to Col^o. Guy Dickens, as to the Sentiments, & Disposition, of Their Imperial Majesties upon The Contents of This Letter, and That to him.

If The Court of Vienna think, that, in the present Circumstances, the Accession of the King of Poland, to the Treaty of 1746, might be of Service, They may probably, now, be able to bring it about. Count Brühl has long pretended, that he is for it ; And, I dare say, Count Flemming is very desirous to promote The Success of it ; And, indeed, Nothing but the most useless Formalities, seems to have delayed it so long.

We shall probably have, by the beginning of next Week, an Answer from France ; I will, then, send a Messenger, with an Account of it to you ; As You will want one to re-dispatch hither. And you may imagine, That, in the present Circumstances, The King will be desirous to know The Answers to My Letters, as soon as possible.

As The Prussian Encampments, and, probably, Those of France also, are designed for *Demonstrations* at least ; It might possibly have a good Effect, If there was a considerable Encampment, also, of the Austrian Troops this Summer.

Tho' The King thinks proper to be providing for The worst, upon a Supposition, That the King of Prussia may not be to be controuled, yet you are to inculcate into The Court of Vienna, in The strongest Manner, That His Majesty thinks, Nothing ought to be omitted, That may prevent a Rupture ; The Consequences of which Nobody can foresee ; And which, If It should happen, will undoubtedly be supported by a very great, and, I am afraid, a Superior Force on the other Side.

I am &c^a.

HOLLES NEWCASTLE.

42. NEWCASTLE TO KEITH

(S. P. For., *Germany (Empire)*, vol.191)Whitehall, March 30th, 1753.

SIR,

Pollock, The Messenger, arrived here on Saturday Night last, the 24th Inst^t., & brought me Your Letters of the 9th; which I have laid before The King. And we having now received Answers from France to the Instances made, by His Majesty's Order, on Account of the late Extraordinary Proceedings of The King of Prussia; & also to the Application made by My Lord Albemarle for The Concurrence, or Acquiescence, of France, in the last Offers of The Court of Vienna to The Elector Palatine; I now dispatch This Messenger, according to My Promise, with an Account of The Whole. And, That You may be fully apprised, of the Instances made, as well as of The Answer return'd; I send You inclos'd a Copy of The Minute, which, To avoid Mistakes, The King had been pleased to direct The Earl of Holderness, & Myself, to read to The Duc de Mirepoix, and leave with Him, To form his Report to his Court upon. And, on Monday night last, The French Ambassador brought me The inclosed Answer, in the same Manner.

You may easily imagine, That The King cannot but look upon This Answer as a very dry one. It is, in many Parts, defective; & in others, It condemns Some Principles laid down in Our Answer to Prussia; as destroying the Foundation, upon which The French have formed Their Pretensions, for Restitution of Prizes made upon Their Subjects. But, as There does not seem by it to be any Disposition to come to a Rupture; And, as Mor. de St. Contest (in His Conversations with My Lord Albemarle) has, in The strongest Manner, admitted The Obligations, which They are under to His Majesty, by The Treaty of Aix La Chapelle, To guaranty All, The King's German Dominions, & Possessions; which is insisted upon, in the Paper which we gave to The Duc de Mirepoix; And, as The French King does promise to use His Endeavours with The King of Prussia; His Majesty will wait to see the Effect of Those Promises. But We have given Mor. de Mirepoix to understand, That The King expects to know soon The Resolution of His Prussian Majesty; For His Majesty will not be amused, or suffer This Affair to be drawn into an unreasonable Length; which The French Ambassador has assured us is by no Means The View or Intention of His Court.

In This Situation, You may imagine, That The strong Assurances given You by Their Imp^l Ma^{ties}, and repeated

afterwards by Their Ministers, That The King might depend upon Their fulfilling, with The utmost Exactness, All Their Engagements to His Majesty, both as *King & Elector*, were very agreeable to His Majesty.

You will, upon The Receipt of This Letter, ask an Audience of Their Imp^l Mat^{ies}. You will acquaint Them, in general, with The Answers, which The King has received from France; as a Mark of The Confidence, which His Majesty places in Their Friendship. You will return Them The King's Thanks, for The Assurances They have given You, of Their firm Resolution to perform all Their Engagements to His Majesty, as *King & as Elector*; And You will observe to Them, That Tho' His Mat^y both hopes, & believes, from the present pacifick Disposition of France, That The King of Prussia will not venture to proceed to any *Voye de Fait* in Consequence of what has passed, or shall pass, upon the particular Disputes between His Majesty & The King of Prussia, relative to the Rights & Pretensions of Their respective Subjects; His Maj^y however is persuaded, That Their Imp^l Mat^{ies} will dispose Things so, as to be the best able to defend Themselves, & their Allies, against any Attack, That may be made upon Them.

The King took particular Notice of what The Empress Queen flung out to You, 'That The Wisest Thing, That could be done at this Juncture, would be, not only to consolidate, but to extend Them, (Viz^t. Our present Engagements) further, & That She believed, a Method might be proposed for that purpose; which might not only put us in a Condition to defend Our Selves, if attacked; but might even be a Means of preventing The King of Prussia from Attempting any Thing To disturb The Publick Peace.'

The King finds, also, That, agreeably to This Idea, They have actually under Deliberation a Plan of Some New Concert.

If That Plan should be a Proposal of His Maj^{ty}'s Accession to the 4th Secret Article of the Treaty of 1746. between The Two Emperres; Such an Accession, If it were practicable, would by no means answer The End, which is professed to be in View, by The New Concert now desired to be enter'd into. I send You, for Your Information, a Copy of That Fourth Secret Article. It is so loosely expressed, that It is pretty difficult to know what it means, or when, or How It is to operate. There is only One Thing clear,—That The King of Prussia may, by That Article forfeit His Right to Silesia, by an Attack upon The Republick of Poland, a Power no ways concerned in the Treaty, which stipulates The Cession of Silesia; and consequently by an Act, which was in no Sense a Condition of That Cession. However, You may assure Their Imp^l Mat^{ies}, That The King will always be glad to hear Their Sentiments upon

any Method, which may occur to Them, for promoting a still closer Union, & Concert, with His Majesty; Which The King is as desirous of, as Their Imperial Majesties can be, & thinks as necessary for Their mutual Interests:—That The King can say Nothing to These general Hints, till They are particularly explain'd; but That His Ma^{ty} must return to what He has so often declared, That No Plan, or Scheme, for Those great Purposes, can be Effectual, till The Disputes about The Barrier are settled, to mutual Satisfaction; without which the Republick of Holland will be (I fear,) irretrievably lost to The Alliance. And The King must persist in His Opinion, That Nothing would tend so much to consolidate That Concert, & Union, which The Court of Vienna seems now to desire, as The Speedy Conclusion of The long depending Affair of The Election of the Arch-Duke to be King of the Romans.

I am &c^a.

HOLLES NEWCASTLE.

[*Endorsed*] By Johnson.

43. KEITH TO NEWCASTLE

(*S. P. For., Germany, vol. 191*)

Vienna, May 25th, 1753.

MY LORD,

I told Your Grace in my Letter of the 25th of April, that I had had my Audiences of Their Imperial Majesties, in consequence of the orders sent me in Your Dispatch of the 11th of April, and I am now to apprise Your Grace of what passed upon that occasion; I shall, as usual, to avoid repetitions, throw the whole together of what passed both with the Emperor & Empress Queen: But before I begin, I beg leave to observe, that generally the Conversations I have with the Empress are much more particular, than those with the Emperor, and for that reason I shall confine myself to what passed with Her Majesty, as including every thing material of My conversation with the Emperor.

I followed Your Grace's Directions in acquainting Her Imperial Majesty in general with the Answers which the King had received from France upon the present Dispute with the King of Prussia, as a Mark of the confidence which His Majesty places in their Friendship, and then I returned her the King's thanks for the assurances of their readiness to fulfill all their Engagements to His Majesty as *King* and *Elector*.

The Empress said His Majesty had no reason to thank her upon this occasion, as her Interest, as well as honour, obliged her to the performance of all her Engagements towards His

Majesty; and that the only obligation the King had to the Emperor & Her, was, the pleasure with which they should be ready, at all times, to do every thing, that could contribute to His Majesty's Advantage or Honour. The Empress easily observed the defectiveness of the french Answer; but she agreed with Your Grace in the opinion, that the present pacifick Disposition of that Court, would prevent the King of Prussia from proceeding to *Voyes de fait*; But nevertheless she said, the King might be assured, that the Emperor and she should dispose things in the way that might be most usefull to themselves and their Allies in all Events.

Her Imperial Majesty said, she continued to be of Opinion, that at this Conjunction we ought to think of consolidating, and, if it should be thought necessary, of extending, our present Defensive Engagements; But upon Her mentioning our Accession to the 4th Secret Article, as a proper Means for that purpose, I made use of the Arguments furnished me by Your Grace, to shew, that if such an Accession was practicable, it would not answer the Ends proposed by the new Concert; The Empress, tho she did not give up the Argument, yet she so far acquiesced in what I said, that I may venture to assure Your Grace, as I hinted in my Letter of the 2^d of May, that the Proposal of our acceding to that Article, will never come again in question.

The last part of our Conversation was upon the Affair of the Barrier, and as I was not then apprised of what had passed at Brussels, I was obliged to satisfy myself with endeavouring to shew Her Majesty, the absolute necessity there was, of settling the Disputes about it to Mutual Satisfaction, as without that, the Republick of Holland would be irretrievably lost to the Alliance, and consequently all our Endeavours for consolidating a proper Concert & Union, would be Vain & useless. The Empress agreed with me in general in my position; But as in discourse upon the subject, she threw out somethings, which I thought proceeded from a wrong impression that had been given her about that Matter, I took the freedom, tho in most respectfull Terms, to say some very strong things, to let Her Majesty see that the Principle upon which she reasoned was not conformable to the Title by which she possessed the Low-Countries. I know not how far what I said persuaded Her Imperial Majesty, but I had the Satisfaction to see, that she forgave the freedom I had used upon this occasion.

I have &c.
Ro^r. KEITH.

[Endorsed] R. June 3^d by Johnson.

44. NEWCASTLE TO KEITH

(S. P. For., Germany (Empire), vol. 192)

Mr. Keith.

Whitehall, October 22^d, 1753.

SIR,

I receiv'd, by Count Colloredo's Courier, Your *Private*, *Private,*
& very Secret.
& *very Secret* Letter, of the 5th Inst.

His Majesty would have You Thank Count Kaunitz, for The Communication of The Intelligence, which He had receiv'd, ' That the King of Prussia has empower'd The French Court, to make up Matters between The King, and Him ; And to accept for Him, in lieu of all His Pretences, of all Kinds, one Hundred, & Fifty ; or, at The lowest, one Hundred, & Five & Twenty, Thousand German Crowns.'

And assure Him, That His Majesty is truly sensible of His good Disposition, by making You This Confidence ; And That He may depend upon the Secret's being most strictly observ'd.

I have not mention'd one Word of it to Count Colloredo ; Tho' I am apt to fancy, That He has some Hint of it ; As He seem'd, of Himself, very desirous To know of me, The present State of Our Dispute with Prussia, of Which I gave Him The following, which is The True, Account.

Some Time ago, The Duc de Mirepoix propos'd to me, as from Himself ; That The French King should, (as He call'd it) purchase of The King of Prussia, His Demands upon His Majesty's Subjects, for Prizes, (as The King of Prussia pretends) illegally taken, The last War—That, between Fifteen & Twenty Thousand Pounds, might do the Business ; Which Sum should, afterwards, be repaid to The French King—And, That upon Our Consent to This Proposal, The French King should engage That The King of Prussia should immediately take off The Arrêt, or Embargo, upon The Money, due to The Creditors of the Silesia Loan. This proposal, Mo^r. de Mirepoix, afterwards made, in a more formal Manner. But His Majesty was pleased, Totally To reject it ; As Such a Concession would have imply'd a Right in the King of Prussia, to Satisfaction ; When no such Right did appear ; and when His Prussian Majesty had not Thought proper, to pursue His Pretensions, in The only legal Method ; Viz^t, in the Courts of Admiralty, & Appeal, here : And The Compounding in This Manner, might have been of very dangerous Consequence, here after, by setting a Precedent, which would, at once, put The Disputes, relating to Prizes, into a new, unhear'd of, & arbitrary Way of Decision. The King was also pleased, to declare to The Court of France ; That, If neither His Prussian Majesty, nor The

Court of France, did Think proper, To make some more admissible Proposal, within a Time limited, (which Time is now expir'd ;) His Majesty must look upon The Negotiation, Thro' The Channel of France, to be entirely at an End ; Which is, at present, The Case ; And The King is at Liberty, to take Such Measures, as His Majesty shall think proper, To procure Satisfaction for His Subjects.

I am &c^a.

HOLLES NEWCASTLE.

[*Endorsed*] by Ct. Colloredo's Courier.

45. NEWCASTLE TO GUY DICKENS

(*S. P. For., Russia*, vol. 57)

Colonel Guy Dickens.

Whitehall, March 9th, 1753.

SIR,

Prussia.

I acquainted You, in my Letter of the 13th Febr^y, with the violent Proceedings of the King of Prussia, by the Detention, & Misapplication, of certain Sums of Money, due, on the Silesia Loan, to His Majesty's Subjects of Great Britain ; Of which The King of Prussia had, by the most solemn Treaties, taken upon Him the Payment : And I sent You the Answer, which His Majesty ordered me to return to the Prussian Secretary here, annexing the Report to The King of Those Persons, to Whom His Majesty was pleased to refer this Affair ; By which, The Irregularity, Violence, and Injustice, of the Court of Berlin must plainly appear.

I have, now, The Kings Orders to dispatch this Messenger to You, with Directions for Your Conduct upon this Occasion. And that you may be fully informed of His Majesty's Thoughts, and Intentions, upon it ; I send you a Copy of my Letter to Mr. Keith, of the 13th Febr^y last, whereby you may be the better enabled, to execute the Orders, contained in this Letter.

You will see, that the King is using His utmost Endeavours to induce The King of Prussia, by amicable Means, to redress the Injury, done to His Majesty's Subjects ; And, thereby, prevent the Consequences, which might otherwise happen to the Publick Peace. For this Purpose, proper Applications have been made to the Court of France ; from which There is Reason to hope for a good Effect. But as there is no depending upon the future Behaviour of a Prince, Who is capable of acting, as The King of Prussia has done, *even* in this Instance ; His Prussian Majesty may be deaf to Reason, and think of Supporting one Injustice by Another, (If possible,) still more

outrageous ; And make some Attack upon His Majesty's German Dominions, because The King cannot, and will not, sacrifice the Rights, and Essential Interests, of His Subjects of Great Britain to The King of Prussia's Arbitrary Determinations, & Dispositions ; And The Preparations, which His Majesty has received Advices, are making upon the Frontiers of the King's German Dominions, by buying up Numbers of Artillery Horses ; getting together great Quantities of Forage, and Provision, of all Sorts ; greatly favor, and confirm, such an Opinion. Neither ought the great Prussian Encampment, consisting of 50,000 Men ; which is undoubtedly to be made, This Summer, near Berlin, to be entirely disregarded ; Especially, as It may have some Connection with The several French Encampments, which are said to be designed in Alsace, Franche Comté, and The Low Countries.

It is His Majesty's Pleasure, That you should immediately, upon the Receipt of This Letter, acquaint The Empress of Russia, and The Great Chancellor, and such of the Russian Ministers, as You shall think proper, with the present State of This Case ; And That You should, in The King's Name, observe to Them ; That if, notwithstanding the Amicable Endeavours, which are using to prevent it, His Prussian Majesty, in Support of The Violences, which He has already offer'd to the Rights, & Properties, of The King's Subjects of Great Britain ; And in Consequence, singly, of those Violences, (Tho' coloured under any other Pretences,) should attack The King's German Dominions ; His Majesty is entitled to the Assistance, and specifick Succours, stipulated by the several Defensive Alliances with the most considerable Powers of Europe ; And that His Majesty shall in that Case, reclaim the Performance of those Engagements accordingly ; And that they should acknowledge ; (as the King doubts not, but They will,) any *Voyes de fait*, committed by the King of Prussia, upon any Part of His Majesty's Dominions, upon this Account, to be *Casus Fœderis* ; For, otherwise, as This is singly an English Quarrell ; And in Support of the Rights of Great Britain ; His Majesty would be deprived of the reciprocal Assistance ; which He is entitled to, when those Rights of Great Britain shall be infringed, or invaded ; And This must be allowed to be the Sense of those Defensive Engagements.—Nothing therefore can be stronger, than the Obligations, which The Empress of Russia is under, by the Defensive Alliances of 1741, & 1742 ; And by the King's Accession to the Treaty of 1746, to come to His Majesty's Assistance, and to furnish the Succours there stipulated, in Case the King should be thus attacked. But His Majesty's Friendship, and Consideration for The Empress of Russia is such, That the King is

desirous to make the necessary Assistance, to which His Majesty is intitled, as little Burthensome, as possible, to Her Imperial Majesty ; And, therefore, the King is willing, so far to depart from what, in Strictness, He is intitled to ; That, if you can procure an Assurance, in Writing, That, upon Notice given of an Attack, made by the King of Prussia upon any Part of His Majesty's Dominions, either here, or in Germany, in Consequence of the late violent Proceedings of the Court of Berlin, and of the Support, which The King gives to the Rights of His Subjects of Great Britain ; The Empress of Russia will assist His Majesty with 30,000, or 40,000, Men, now quartered in Livonia, and make a Diversion on the King of Prussia's Dominions, on the Side of Courland ; And, also, furnish a large Body of Cossacks, and Calmucks, to invade other Parts of the Prussian Dominions, or to be transported by Gallies to make an Irruption, on the Side of Stettin ; His Majesty will, from the Day, that such Regular Troops, or such Irregulars, shall march from their present Quarters, for the Purposes abovementioned, give a proportionable Subsidy, according to the Numbers ; to be continued, as long as those Troops shall remain in the Service of Great Britain ; And, If the Troubles should be soon, and happily ended, then, and in that Case, Some Part of that Subsidy may be continued, for such further Time, as shall be agreed upon. Tho' the Circumstances of this Country will not permit the King to grant any considerable Subsidy, without there shall appear to be an absolute Necessity for it ; which, the King is still willing to hope, will not be the Case ; Yet His Majesty does not propose, That The Empress of Russia should put Herself to any Expence, 'till the Troops are demanded, and the Subsidy shall commence.

By Your Letter of the $\frac{1}{2}$ ^{5th} of September last, You assure me, That, by the new Disposition, then made, there would remain about Sixty Thousand Men, between Narva, and Libau, in Courland. That is just the Station, where The King wishes Them to be ; And from whence, the proposed Diversion, (if necessary,) must be made ; So that no previous Expence is required for Their March. The Cossacks, and Calmucks, I suppose, are always ready, or may soon be so ; And if any other previous Expence should be necessary ; That may be fully satisfied by the future Engagements. The great Point, therefore, is to agree upon the Number of Troops, and the Sum to be paid for Them ; And That His Majesty may have, forthwith, a Security, That, when He is attacked, The Empress of Russia will, on Those Conditions, assist Him with Her Troops.

The Empress of Russia, in the Year 1747, furnished, for the

Service of the Maritime Powers, 30,000 Men, which were, indeed, 35,000, for a Subsidy of 300,000*l.*, per Annum ; And took upon Herself the Expence of the March of the whole Corps, from the Frontiers of Russia, all thro' Poland, to Upper Silesia, for 150,000 Dutch Crowns only. In that Case, there was no Demand of Succours from Russia. That was merely a Bargain for Troops ; Whereas, in the present Case, The King has a Right to the Succours stipulated, without any Consideration ; And the Troops are not to march out of their Quarters, 'till the Subsidy is proposed to be given.

These Considerations, therefore, ought greatly to lighten, and lessen, the Expence. The King will not name any certain Sum as That must depend upon the Proportion of Troops, &c^s. to be furnished ; But His Majesty hopes, You may be able to come to some Precision with the Court of Russia, both as to the Number of Troops to be furnished, Regulars, and Irregulars, and the Quantum of the Subsidy to be granted for Them ; To which, If founded upon the Principles of this Letter, The King may, upon the Return of this Messenger, agree, And ; in Order thereto, You will use Your utmost Endeavours to reduce the Sum, That will be proposed by Russia, as low as possible ; And, in that Case, His Majesty Hopes, from the Friendship of The Empress of Russia, and from the Security, which She will have, That the Troops will not be demanded, 'till the Conditions shall be complied with, the General, and Commander in Chief, of the Russian Troops, in Livonia, may have Provisional Orders to March, upon Notice given, from The King, of an Attack made, by The King of Prussia, upon His Majesty's Dominions ; and upon an Assurance, from the King, That the Terms, and Conditions, proposed by The Empress, are agreed to by His Majesty.

This will remove all Doubts, on all Sides. His Majesty will be assured of the immediate Assistance of The Russian Troops, for making a proper Diversion, in Case the King is attacked ; And The Empress of Russia will, also, be secure, That That Assistance shall not be required, 'till His Majesty has complied with such Demands, or Proposals, as You, in consequence of this Letter, shall transmit hither, for the King's Approbation, and Consent.

To reduce, therefore, this great Question to a short Point, (which is, also, a full Answer to All, That You have wrote, upon the Subject of a Subsidy to Russia ;) In the present Circumstances of this Country, His Majesty does not think it advisable, at all Events, to give a Subsidy to Russia ; But, in Case of an Attack from Prussia, for the Causes abovementioned, The King is not only willing to give a Subsidy, but such a One as may enable the Empress of Russia to act in Support of the

King, in such Manner, as may be for His Majesty's immediate Service ; And the most probable for the Restitution of the Publick Peace, which will, then, have been broke ; And for Securing the Interests, & Independance, of those Powers, who would be as materially affected, and, perhaps, more so, than the King, by any farther Accession of Influence, and Power, to The King of Prussia ; Which would infallibly happen, If His Majesty is not, powerfully, & effectually, assisted. And, in Support of this Truth, I might add several very strong Considerations : But, as It is impossible for Them to escape the Observation of the Russian Ministers ; I shall not add to the Length of this Letter, by Enumerating them. I cannot, however, avoid mentioning, That, If the Court of Russia neglect this Opportunity, and insist upon a previous Provisional Subsidy, which cannot be granted : If the King of Prussia should once resolve to break the Peace ; Russia would then find Themselves under a Necessity to defend Themselves, upon their own Bottom, without, probably, any Assistance of Men, or Money ; The Turks would be ready to take Advantage of such a Situation, (for which there is certainly, at present, a Disposition in the Porte ;) And The Emperor, and Empress Queen, would have more than sufficient Occupation, in providing for their own Security ; When, If His Majesty's Plan is followed, The Peace will either be effectually preserv'd, as I hope, and believe, It may be ; Or, If that cannot be obtained, such joint Measures are proposed to be taken by The King, and the Two Empresses, as may be most likely to put a short End to the Disturbances, If They should happen ; And the best to secure the particular Interests of the Respective Powers, and the General System of Europe, from the Ruin, and Destruction, which may threaten them.

I send this Letter open to Mr. Keith ; with Directions to Him, to talk to the Austrian Ministers upon it ; And to transmit to You, by this Messenger, an Account of the Result of His Conferences with Them. And that you may be fully informed of Every Thing, that relates to your present Commission ; I send You a Copy of my Letter, which this Messenger carries to Mr. Keith.

I am &c.

HOLLES NEWCASTLE.

[*Endorsed*] by Money.

46. NEWCASTLE TO GUY DICKENS

(S. P. For., Russia, vol. 57)

Col^o. Guy Dickens. Whitehall, March 9th, 1753.

SIR,

You will have, in my other Letter, The King's Directions for the Answer, which You are to return to The Great Chancellor. I should think, It might not be difficult, To raise a Sum of Money upon the Security, which will be now released by The King. His Majesty, however, is willing to make a further Present to Mons^r. Bestucheff, If He can procure The Empress of Russia's Consent to the Plan, proposed in my Letter. And, If the Chancellor will give You an Assurance, in Writing, That The Troops in Livonia, and The Calmucks, shall make The Diversion proposed, as soon as The General, & Commander in Chief of the Russian Troops in Livonia, shall receive Notice from The King, That The King of Prussia has attack'd His Majesty's Dominions; And That The King also consents to The Terms, proposed by the Court of Russia, and which shall have been transmitted hither by You;—You are, in That Case, and not otherwise, hereby authorised, to advance to The Great Chancellor, The Sum of Two Thousand, Five Hundred Pounds: And You may further engage, To pay Him The Sum of Two Thousand Five Hundred Pounds more, as soon as The Russian Troops shall begin Their March, in consequence of The Requisition, which shall be made by His Majesty. And, as an Encouragement to The Chancellor, To assist You in Your Negotiation; You may also promise Him a further Gratuity, If He will help you, in making The Subsidy, to be paid, as moderate, as possible; And The Lower The Subsidy is, The Greater will be His Consideration for it.

You see by This, how much The King has The Success of This Affair at Heart. And, If The Chancellor has still The Credit which He had; He has, now, an Opportunity, To do great Service to The Empress of Russia; A very agreeable Thing to His Majesty; And what will prove an immediate Advantage to Himself, as well as, in it's Consequences, a great Security to His own Credit, and Power, with The Empress, His Mistress: For You always represented, That Nothing would do That, so effectually, as a Prospect of getting a Subsidy from The King. I do admit, That There is not an absolute Certainty of it, by This Proposal: But The Subsidy will be certain, If There is any real Occasion for it; For The Peace will be preserv'd; Or, if not, The Empress of Russia will be well paid, for Her Assistance. I hope, You will endeavour,

To reduce *The Quantum* of the Subsidy, as low as possible ; And, then, There will be no Difficulty, in Agreeing to it ; It being not to commence, 'till The Attack is actually made, by The King of Prussia.

We shall be very impatient, To know The Success of This important Negotiation ; And, therefore, I must desire You, To redispach This Messenger, as soon as possible.

I am &c.

HOLLES NEWCASTLE.

[*Endorsed*] by Money.

47. GUY DICKENS TO NEWCASTLE

(*S. P. For., Russia*, vol. 57)

Moscow, $\frac{1^{\text{st}}}{12^{\text{th}}}$ July, 1753.

MY LORD,

[Written
in
cypher.]

My last Letter to Your Grace, was of the 21st of June N.S. in which I acquainted You, That, the Day before, The Empress had sign'd, & delivered to The Two Chancellors, The Papers, authorising Them to return an Answer to The Representations I had made, in consequence of Your Grace's Dispatch of the 9th March last.

How can I now, without blushing for These Two Ministers, repeat what I have so often wrote to Your Grace, That Money, The Messenger, is still here ? and for no other reason, than because the Vice-Chancellor's Youngest Daughter, a Child of Five Months old, was pleas'd to fall sick, and to die ; which Event drove The Vice-Chancellor into The Country ; from whence, with much Difficulty, He was prevail'd upon to come to Town, on Monday last ; Which Day, in The Evening, General Pretlack, & I, being invited to a Conference, The Two Chancellors delivered to me, at last, in Form, Her Imperial Majesty's Answer to my abovemention'd Representations ; but, on my Return Home, I found one of the most material Papers wanting, of which having given The Great Chancellor immediate Notice, He acknowledg'd, with many Excuses, That it was thro' his Negligence ; but that He would send it to me to Morrow, without Fail ; And, as I am resolv'd not to give Him one Minute's Rest, 'till I have got it, I believe I may now assure Your Grace, That Money will be at Vienna, before This Letter reaches Your Hands ; which Way I propose to send Him ; as I do not think The Other safe, in the present Circumstances.

Notwithstanding the strong Assurances given me, and the friendly, & disinterested Preamble of The Empress's Answer,

delivered to me, I must prepare Your Grace, by telling You the Demands run very high ; but that shou'd not give Your Grace an ill Opinion of the Success of This Negotiation ; for I am fully persuaded, That, when The King's Counter-Project comes, (in which, Care must be taken to express clearly His Majesty's Ultimatum ;) This Court will agree to it. The Paper, I mention'd, above, to be missing, is an Acknowledgment, which They promis'd me, of The *Casus Foederis*, By which, One Hundred Thousand Pounds, and more, is at once struck off of The Subsidy demanded ; as Eight Thousand Foot, and Four Thousand Horse, due by Treaty, are to act for Nothing.

I am with the most profound Respect

My Lord &c.

M. GUY DICKENS.

[Endorsed] R. Aug^t. 11th.

48. NEWCASTLE TO GUY DICKENS

(S. P. For., Russia, vol. 57)

Col^o. Guy Dickens.

Whitehall, Aug^t 24th, 1753.

SIR,

Money, The Messenger, arrived here, on Monday Night last, with Your Letters of the 6th and 7th past ; And The several Memorials, Answers, and Papers therein inclosed.

I cannot conceal from You His Majesty's great Surprize, and Disappointment, at The Contents of Them ; after the very strong, and repeated, Assurances, which You had sent me, in Your Letters, That ' The Court of Russia would come into His Majesty's Plan, and, in such a Manner, as would be entirely agreeable to Him.' And particularly in that of The 12th May ; ' That The Delay did not proceed from any Difficulties You had met with, in Your Negotiation, For, *That, all His Majesty had desired, had been granted, and agreed to.*'

You must have suffered Yourself to be extremely deceived, as to The Disposition of The Court of Russia, or to have greatly misunderstood, what were The King's Views, and Expectations, if You could think, That The Project, now transmitted by You, *contained all His Majesty had desired.*

You was expressly told, in my Letter of The 9th March, That The King did not think proper to give any Subsidy, in all Events ; But, only, when The Russian Troops should, upon an Attack having been first made, be required by The King ; And that, then, *The Subsidy* was to be a reasonable One : Whereas, by this Project, not only an immediate Subsidy is insisted upon, in All Events, for keeping The Army in Livonia ;

But such an enormous One, as One Million of Dutch Crowns, amounting to 230,000 Pounds Sterling, which is within 70,000[£] as much, as was given for The whole Corps of Russian Troops, when They were actually employed in The Year 1748 ; And besides This, a further Subsidy, of near 700,000 Pounds Sterling Per Ann: is demanded, when The Troops shall be required

to act ; & Subsistance &c*. amounting to near 300,000 more, Tho' it is not proposed, That Those Troops should ever be employed, at any Distance from Their Station on The Frontiers, And tho' They will, in that Case, always have an Enemy's Country to live upon. And, what is still more, One Year in Advance is proposed to be paid, both of the immediate Subsidy, and of The Eventual One, whenever The Troops are required.

You must forgive me, if I say, That it is scarce to be imagined, That You had read The Papers, containing These exorbitant Conditions, and The Letters, which I sent You, by The King's Order ; By which you ought to have governed Yourself : And I cannot any way Account, for The Manner, in which You represented, in All Your previous Letters, The Disposition That The Court of Petersbourg was in, upon This Subject.

I am sorry to tell You, That His Majesty extremely disapproves Your Conduct, throughout The Whole : In having first given such strong Assurances, which appear to have been without Foundation ; And in having afterwards transmitted such exorbitant, and absurd Proposals, so contrary to what, you knew, was The King's Intention ; And That, without having made, (by what appears,) any serious Remonstrance, or Protestation against Them.

His Majesty is, also, extremely offended, That You took upon Yourself, without Order, to give a Memorial in writing ; particularly a Memorial of such a Nature as This ; Of which You could not be certain what use may be made ; And Experience should have shewed You, That a very improper Use had been made, of such indiscreet Proceedings before.

The King also observed, That You have suffered Them in Their Answers, & Projects, to put The Whole, Singly, upon The Representations made by You, and The Danger His Majesty was in, of being attacked by The King of Prussia : Whereas, It appears, by The Opinion of The Russian Senate, given Solemnly, and in The greatest Form, That The Measures, which They advised The Empress Their Mistress to take, were formed upon what They conceived to be The Essential Interests of Russia : By which Turn in The Projects, and Answers, The whole Load, and Weight, of This Measure is laid upon The King ; And His Majesty's Interests conceived to be

so essentially concerned, to carry It into Execution, That The Russian Ministers thought, That whatever They asked, must be granted.

The Fact is very far from what The Russian Ministers seem to imagine. Whatever Umbrage some measures might have given, which were supposed to be taking, at The Beginning of The Year, by The King of Prussia, for Assembling Troops &c. on The Frontiers of The King's German Dominions ; Those were very soon at an End, by most explicit Assurances given by The King of Prussia's Order to The King's Ministers at Hanover ; And had there been any immediate Danger in The beginning of March, This Answer, delayed till near The End of August, would have been but of little use to His Majesty.

The King's Zeal for The Preservation of The Publick Peace, & for The Defence, and Support of The Interests of His Subjects, did, and does, dispose Him to enter into proper Measures, with The Empress of Russia, for That Purpose ; And The Unanimous Opinion of The Senate very justly shews, how much They think The Interests of The Russian Empire are concerned, in The Measures, which The Empress is, now, taking. Is it then reasonable, That His Majesty should comply with such extravagant Demands for The immediate Support of Troops, which are, or ought to be, at present, in Those very Stations for The Security of Russia Itself ; Or, afterwards, give such immense Subsidies for The Employment of Those Troops, (If The Case should happen,) upon Services, acknowledged by The Senate to be indispensably necessary, for The Maintenance of The Honor, and Interests of The Russian Empire ? You must be sensible, that His Majesty's Plan, (To which, indeed, I thought, by Your Letters that The Court of Russia had entirely agreed,) was founded upon The repeated Advices, which you had sent me, That The Empress of Russia had between 50. and 60.000 Men in Livonia ; Whereas, I am afraid, from some Accounts which I have seen, That There are not, or were not very lately, above 21,000 Men in Livonia, and Courland ; but Their own Interest, and Their own Security, independently of All Other Considerations, require, by Their own Confession, That They should be greatly increased.

His Majesty was glad to see, by the *Pro-Memoria* of The 2^d July, signed by The Chancellor, and The Vice Chancellor ; That The Empress had ordered 60,000 Men, of regular Troops, to be assembled upon The Frontiers of Livonia, which were actually on Their March thither ; And to add 6,000 Irregulars to Them ; Without waiting for the King's Consent to the Project of the Convention transmitted by You.

His Majesty hopes, that this, will not have been delayed ; Tho' I wonder, That You make no mention Yourself, of any

Number of Troops, having yet been actually on Their March thither ; Or have said any Thing, in these last Letters, of General Apraxin's being appointed Commander of That Army ; Or of The Diligence, which, You formerly mentioned, That He was employing, to have it compleat as soon as possible.

This Resolution, if really executed, will not fail to have an immediate good Effect ; And The King hopes soon to hear of the actual Arrival of The greatest Part of These Troops, at The Place of Their Destination.

Thò You will see, by what I now write, and by what You must have known, That The Conditions, contained in This Project, are not, in any Degree admissible ; Yet The King, as I said before, is willing to come to a reasonable Agreement with The Empress of Russia, *upon the Principle of My Letter of the 9th of March last.* The Russian Ministers, Themselves, I find, expect, That great Deductions will be made ; And Very great Ones they must be. And as You desire a Counter-Project from hence, which may contain His Majesty's *Ultimatum* ; The King has ordered One to be prepared, which I hope soon, to be able to transmit to You ; And which will contain the utmost Lengths [to] which His Majesty can, or will, go.

The Memorials, Projects, and Answers, Thò they contain very monstrous Demands, will, however, be all considered, and due Regard will be had to what is reasonable on Both Sides. The Defensive Engagements already Subsisting between The King and The Empress of Russia, and The Quotas or Contingents in Consequence of Them, must be The Basis, and Foundation, of This Counter-Project ; And the Additional Engagements, which His Majesty may be disposed to enter into with Russia, in Order to enable The Empress to be more useful to The King, and His Allies, may possibly be most properly introduced by Way of Supplement to The Succours already stipulated by former Treaties ; But This will make no essential Difference.

You will see, by my Letter of the 9th of March, what were His Majesty's General Views ; Those are still The Same. The Preservation of the Publick Peace, The Support of The Interests of His Majesty's Own Subjects, and the Independency of His Allies, are All greatly concerned in This Question ; And The Unanimous Advice of The Russ^a. Senate strongly confirms His Majesty's Opinion, as far, at least, as relates to The Empress Their Sovereign, and Her Empire.

I send This Letter by Count Colloredo's Courier, to Vienna, to be forwarded from thence by One from Count Kaunitz to The Imperial Ambassador at Moscow.

I am &c.

HOLLES NEWCASTLE.

49. NEWCASTLE TO YORKE

(S. P. For., *Holland*, vol. 462)Col^o. Yorke, *Oostfrise*. Whitehall, Jan^{ry} 19th, 1753.

SIR,

I receiv'd Your Letter of the 12th Inst. giving an Account of a Report, That The King of Prussia had order'd Quarters to be prepared at Embden, for 10,000 Men.

This Report, or indeed the Fact, if It should prove True ; would not at all surprize me ; For, You may remember, that I was of Opinion, in the Summer ; that the supposed Design of sending a Number of Troops towards the Frontiers of the Republick, was with a View to intimidate England, and Holland, either by such a Report, or afterwards by such a Measure. These different Advices, which may probably, in some Degree, be verified, coming immediately upon the very extraordinary Behaviour of the Court of Berlin, towards All Those Powers, who have any particular Dealings, or Concern, with Them ; require the very serious Attention of His Maty and The Republic of Holland.

You will have seen, by The Printed Paper,¹ which You transmitted to me, Some Time ago, the very unjust Detention, which His Prussian Maty has made, of the Property of The King's Subjects, secured to Them, by the most solemn Treaties, on The Dutchy of Silesia ; & made, by The Empress Queen, an essential Condition of The Cession of That Dutchy to His Prussian Majesty.

This Detention is made on the most absurd, frivolous, & even dangerous Pretences, & Principles, inconsistent with constant Usage, & common Justice ; & highly injurious to The Honour, & Interest of all Independent States ; As will very soon appear, by The Answer, which will be given to Monsieur Michel's Memorial, and That Printed Paper, deliver'd to me, in form, by The Prussian Secretary.

It is, therefore, His Majesty's Pleasure, that You should talk, in the utmost Confidence to The Princess Royal ; Prince Lewis ; The Pensionary ; The Greffier, & Count Bentinck ; And represent to Them the Necessity of putting Their Frontier Towns, in the best Condition possible ; and to dispose Their Troops so, as to prevent a Surprize ; Which may be expected, from a Court, acting in the Manner, which That of Berlin has, of late, done ; without any Regard, either to particular Treaties, or to the general Law of Nations.

I am, &c^a.

HOLLES NEWCASTLE.

¹ Probably a copy of the *Exposition des Motifs*, printed at Berlin.

50. YORKE TO NEWCASTLE

(S. P. For., Holland, vol. 462)

Hague, January the 23rd, 1753.Separate. *Ost Frise.*

MY LORD.

I must acknowledge the receipt of Your Grace's Letter of the 19th instant, relating to Ost Frise, in a more particular manner than the others which accompanied it, as the matter contained in it, is of a more important & delicate nature.

The report of The King of Prussia's having order'd Quarters to be prepared at Embden for 10000 Men, is at present confirmed to be a fiction, and the noise it made consequently Subsided. It was occasioned by an order which had been Sent from Berlin to that Country, for marking all the houses, with a view, it is imagined, of increasing the Taxes which the Inhabitants are obliged to pay, though it is not impossible, but that His Prussian Majesty, finding the effect such a report has produced, and the alarm which his Minister here has endeavour'd to make him believe it had occasioned, may give birth to some other reports of the same nature, if not to the actual march of some Troops into that Principality.

In making use of the arguments, which Your Grace is pleased to arm me with, for talking to the Princess Royal upon the Subject of Your Dispatch, I am highly Sensible, how much attention it is necessary I should pay to the last paragraph of it, where you recommend to me, *carefully to avoid, either giving any unnecessary alarm, or doing any thing which could create an opinion, though never so distant, that His Majesty is advising any measure, which might expose the Republick or the Publick Peace.* I had some days ago in Conversation with the Pensionary, in which I talk'd over with him, the very extraordinary behaviour of the Court of Berlin, towards all it's Neighbours, as well as towards England, by the very unjust detention of the property of His Majesty's Subjects, founded on the most frivolous, though dangerous, pretences. I found the Pensionary rather alarmed at the appearance of affairs, which I endeavoured to dissipate, as far as related to the Republick, by the reliance he might always have on His Majesty, though at the same time I endeavoured to Show him how much easier he would have reason to be, if their Frontier was out of danger of being insulted, and that in effect it was the only true way of keeping the peace, which he could not be more desirous of maintaining, than we were; but that if we neglected our Security, we might depend upon a rupture, as the temptation to ambition would be the stronger, the easier

it was to be Satisfied. I am very happy that I should have already laid the foundation for executing His Majesty's orders ; I know from Mons Larrey that what I said made an impression, though I will not conceal from Your Grace, that it gave some alarm too, notwithstanding the extraordinary care I took in the expressions I made use of, and the repeated assurances, that I only talk'd of my own head, and in order to know his thoughts, which he did not however at that time think fit to acquaint me with, as he referr'd every thing to Mr. Bentinck's return, upon whose Success, he said, every other measure of this Country depended.

When Your Grace went through here, at the end of last autumn, I had the honour, upon the questions You then put to me, to tell You how weak a Frontier the States have, upon the Side of Germany, and how very few Troops were left there, Since the Quota in the Barrier Towns was compleated. That Situation does not help to encourage the Pensionary, and the expence the putting the Frontier in a better, would occasion, is a circumstance of some weight here. The experience I have had in my former conversations, will make me, unless Your Grace should be of another opinion, wait Count Bentinck's return, in order to concert with him, how proper measures may be proposed and taken, without falling into the Inconveniences, that too much eagerness might occasion. In the mean while, the Greffier has promised me, to look out for the Resolutions, that were taken by the Council of State, with relation to the frontier, upon an alarm the Republick had three or four & twenty years ago, during the life time of the late King of Prussia, which may furnish us with Some lights, as to what may be necessary now.

Your Grace may depend upon my executing these orders, with the utmost prudence & circumspection, & when opportunity shall offer, I shall not fail to let You know the real thoughts of our friends here, upon the Contents of Your Grace's Letter.

I have, &c.

JOSEPH YORKE.

51. NEWCASTLE TO YORKE

(S. P. For., Holland, vol. 462)

Colonel Yorke. *Private.* Whitehall, Feb^{ry} 13th, 1753.
SIR.

You will receive, by my other Letter, The Answer to The Prussian Memorial ; which You are to communicate to The Princess Royal, and The Dutch Ministers, and leave with them. I am to acquaint You, that His Majesty has order'd

a proper Communication, & proper Representations, to be made to the Court of France, upon this unjust, & violent Proceeding, of The King of Prussia. If the Apprehension of a War, which His Prussian Maty's Perseverance in these Acts of Injustice may, at last, unavoidably produce, is sufficient to engage France seriously to interpose; There is no Doubt, but that They may dispose The King of Prussia to do Justice: But if, either France should not be sorry, that His Prussian Maty should begin, or should hope, that these Acts of Violence, if supported, might tend, as they undoubtedly would, to the Ruin and Destruction of the Trade & Navigation of His Majesty's Kingdoms, and greatly lower & reduce the Weight, Reputation, & Influence, of The Naval Force of this Countrey; There would be Reason to fear, That, in that Case, The King of Prussia may be encouraged to support His present unjust Proceeding; by some Attack, either upon His Majesty's German Dominion's, or on The Republick of Holland, on the Side of Ostfrise. I have certain Intelligence, that The King of Prussia has marked out a camp for 50,000 Men near Spandau; And I also hear, that 10,000 Men are directed to march to Ostfrise; but the last Circumstance (as appears by Your Letter of —) seems, at present without Foundation. It is His Majesty's Pleasure that You should talk seriously upon This Subject; to The Princess Royal, to Prince Louis,¹ and to the Dutch Ministers of Confidence. The King does not in the least doubt, but that if any such Attack should be made, either upon His Majesty's Kingdoms, or on The King's German Dominions, His Majesty might depend upon the immediate Assistance of The Republick, in Consequence of the Friendship & Union, as well as of The Defensive Arrangements, which subsist between Them.

The King is also persuaded, that They will look upon this as a Common Cause, And, therefore, You will learn the Sentiments of The Princess Royal, & Our Friends, what Measures The Republick may be able to take, in case this Mischief should unavoidably come upon Us; But You will give them the strongest Assurances, that His Majesty will do Every Thing in His Power to prevent it, which is consistent with the Justice which The King owes to His Subjects, and with the Honor, & Dignity, of His Majesty's Crown.

We have already talked to The Duc de Mirepoix, in the most friendly Manner, upon this Occasion; and Nothing could be more satisfactory than His Way of receiving it, & His Conversation upon it. But, at the same Time, I must own

¹ Prince Louis of Brunswick, made a member of the Council on Foreign Affairs in July 1751 (*Archives de la Maison d'Orange-Nassau*, 4^e série, c. 2, p. ix).

I have my Suspicions, that His Court may not act so fair a Part, as The French Ambassador wishes, and would advise.

All Rival Nations may be glad to see the Fleet of England, & the Trade of this Countrey, reduced & embarrass'd; And the lesser Powers may not be sorry to have a Precedent for carrying on Trade in Time of War, in the unjustifiable Manner now insisted upon by The King of Prussia: Which, If It was to be submitted to, would make it impracticable for this Country ever to engage in a Foreign War; Tho' Their immediate Interests were never so much concerned.

The Republick of Holland is so truly connected in Interest with this Countrey, that whatever affects the one, does in reality equally concern the Other. But, as the Trading Towns in Holland often consult Their particular, local, Interests, preferably to that of The Republick, I am not certain, how they may reason, upon this Subject: And therefore You may take Care, to have a Number of these Answers dispers'd amongst them.

I hope to hear from You very fully, & confidentially in Answer to this Letter.

I am, &c^a.

HOLLES NEWCASTLE.

[*Endorsed*] Dra^t. to Col. Yorke, Febr^y 13th, 1753. Private, by Pollock.

52. YORKE TO NEWCASTLE

(*S. P. For., Holland, vol. 462*)

Hague, February the 20th, 1753.

MY LORD.

Your Grace's dispatch of the 13th instant, was deliver'd to me late on Saturday night, by Pollock, the Messenger, (who went on immediately to Vienna:) together with the Answer, Your Grace returned to Mons. Michel's Memorial, by His Majesty's order, and the Report annex'd, refuting the *Exposition des Motifs*, &c. which the Prussian Ministers have printed and dispersed in all languages, and in all Countries.

In obedience to the King's Orders, I have deliver'd those Papers to the Dutch Ministers, and I can with Truth assure Your Grace, that they have given universal Satisfaction; Every body who has read them is fully Satisfied of the Justice of the Proceedings in England, and of the violence and absurdity of those at Berlin. The Publick is highly impatient for the publication of the Report, and I shall endeavour to

Satisfy them tomorrow, I hope at least; but as the demand is very great in all the Trading Towns of this Country, I have consented to a Translation being made of it in Dutch, Since it is very essential, that they should be fully informed of the nature of this Affair, in which many here think themselves interested. I flatter myself, my proceeding in this manner, will be conformable to the King's intention. I am convinced, the perusal of it will have a very good effect in this Country, and the Prussian Paper having been distributed with so much affectation, it is natural they should expect the Refutation of it.

The moderation the King is pleased to shew upon this occasion, as well as the firmness, with which His Majesty Supports His Subjects in their just Rights, is the Topick of Conversation every where, and the admiration of every body, and it is to be hoped, they will have a proper weight with the Court of Berlin.

I have, &c.

JOSEPH YORKE.

53. NEWCASTLE TO YORKE

(S. P. For., Holland, vol. 462)

Whitehall, March 6th, 1753.

Colonel Yorke. (Private & Secret).

SIR,

I am, now, in Consequence of my Promise, to send You the King's Orders upon Your several Letters, which have not yet been fully answered.

I shall confine this, chiefly, to those, which give an Account of Your Conferences with The Princess Royal, The Pensionary, & the other Dutch Ministers in Confidence, upon the Instances, or, rather, Conversations, which You were directed to hold, upon a Supposition, That The King of Prussia might be extravagant enough to proceed to *Voyes de fait*, And make some Attempt upon His Majesty's German Dominions, In revenge *en haine* of The Support, which The King will always think proper to give to the just Rights, and essential Interests of His Subjects of Great Britain; and particularly of their Commerce, and Navigation, And I shall begin, by returning You an Answer to Your Letter of the 20th of February¹; Which contains the material Objections That You have met with. I have the Pleasure to assure You, that His Majesty entirely approves Your Conduct, in this difficult and delicate Affair.

Nobody can lament more than The King does, the Weak,

¹ This private letter is not to be found.

& unfortunate Situation of The Republick, or be less surprised, that those Ministers, who are True Friends to Their Country, should give, upon all Occasions, the greatest Attention to it ; That Weakness of Holland His Majesty considers as one great Part of our Own, and for that Reason will not enter into Any Measure, which can, in Justice, and Prudence, be avoided, that may, in it's Consequences expose either this, or that Country. But that may not be, as in the present Case, always in The King's Power. The Question, now, is, Whether, The Violent Detention of Money due to His Majesty's English Subjects, and secured to Them, by the Most Solemn Engagements, from His Prussian Majesty, both to The King, and to The Empress Queen, (and that upon a most valuable Consideration ;) Which Detention, also, was, (as appears) for a Cause, as little justifiable, as the Act Itself ; Whether, I say, this Violence was to have been acquiesced under, & submitted to ; & left unanswered, from a distant Apprehension, that an Injustice committed against The King's Subjects of Great Britain, might still be agravated by a further Violence, and open Attack upon His Majesty's German Dominions.

It is sufficient to state this Question, to shew, that The King had but One Part to take in it ; And That once shewed, is sufficient also, to prove the Obligation of All His Majesty's Allies to assist him against such an Attack, If It should be made. There is no One Power in Europe, that desires more sincerely to preserve The Publick Peace, than The King does ; And the Moderation with which His Majesty has acted in this whole Affair, (provoking as it has been) is, of Itself, a sufficient Proof of it. But as no Consideration or Apprehension, can ever induce, The King to neglect the true Interests of His Kingdoms, Honor, Justice, and Gratitude, will ever engage This Country to support His Majesty, to the utmost against any Attempt that may be made any where, upon Him, for so doing.

We have talked this whole Affair, very fully, over, with the French Ambassador ; Who saw it just in this Light ; And the inclosed Copy of My Lord Albemarle's Letter, will shew You, that Mo^r. de St. Contest sees it in the same Light, also : And if the Court of France will, as I really hope they will, make serious Representations upon it, to the King of Prussia, there is little Reason to fear any *Voyes de fait* from His Prussian Majesty, Tho' It is always prudent to prepare for the worst, when You have to do with a Prince who is governed by Those Principles, which appear to have influenced The King of Prussia in This Affair.

The Princess Royal, therefore, and The Dutch Ministers, must consider any Rupture or Attack made upon The King,

on This Account, as an unavoidable Evil, If it should happen ; And from that Consideration, determine, what part the Honor, and Interest of the Republick require of Them to take ?

You did very rightly, in appealing to the Pensionary ; to whom They would look up in Case of Their Distress ; Which will probably happen in some Shape or other, If His Prussian Majesty shall go those Lengths, of which We are, now, barely supposing a Possibility.

Tho' The Princess Royal, and The Pensionary, will be confirmed in Their Hopes of the Interposition of France ; Yet, that is far from being a sufficient, or positive, Security, entirely to be depended upon.

The King, as I have observed, is not surpris'd at the general Discourse of The Pensionary ; but that His Majesty is persuaded, that the Two principal Objections, now made by Him, will be removed as soon as ever, They are explained to Him.

As to the First ; Viz^t. The Subject of the Quarrel ; We have no Treatys, relative to this Affair, subsisting with Prussia ; So that the Law of Nations is the only Rule that can be followed here, with Regard to those Disputes with Prussia. The Case is quite otherwise with Holland, as appears by the different Determinations of the Council, which have been according to the Stipulations of the particular Treaties, with the Republick, however grievous, and disadvantageous, for this Country, those Stipulations have appeared to be : So that, The Subjects of The Republick can be affected by this no other Way, than in the very Essential One ; That, if the Rules laid down by The King of Prussia are to be submitted to, England will never venture to engage in a Foreign War ; Tho' France was at the Gates of Amsterdam. And in that Case, They will consider seriously, from whence They will have assistance, and Support hereafter.

The other Objection is still easier to be answered ; And, I own, I wonder, The Pensionary could ask You, upon what Treaty I laid my Finger, to shew, that The Republick was obliged to assist The King, if His German Dominions were attacked. To that I answer ; Experience shews, that the Republick always understood, that They were engaged to do it by Interest, and Treaty : Of which, the inclosed Resolution of The States, in the Year 1729 ; is a most convincing Proof ; when They declared Their Resolution to assist His Majesty not only with Eight Thousand Men ; but, even, more, if necessary, upon an Alarm of an Attempt, at that Time, from The late King of Prussia, unmix'd, unconnected, then, with any English Consideration ; which now is the Sole Cause of the present Apprehension, and much alters the Nature of the Obligation : but the enclosed Copy of the 20th Article of the

Treaty of Aix la Chapelle, which I wonder the Pensionary had forgot, puts this Affair quite out of Doubt ; There The King's German Dominions, and *Possessions*, are expressly guarantied by All The Contracting Powers ; Of which the Republick of Holland was One.

I am persuaded, that that Assistance, which The Government of Holland thought proper to give ; in the Year 1729, before the Establishment of the Stadtholder was brought about, and before any Article, so explicite, as that above-mentioned, in The Treaty of Aix la Chapelle, had been made, will not now, in Case of a Necessity, (which I hope, and believe, will not happen,) be disputed, after the present Settlement has been so happily brought about, and the strongest Engagements have been entered into by the Republick by the Treaty of Aix la Chapelle.

His Majesty would have You acquaint The Princess Royal with His great Satisfaction, with Her Royal Highness's Declaration to You ; ' That in Case The King was attacked, the Republick would be obliged to fullfill It's Engagements, & that for Herself, in particular, She hoped, It was needless for Her to add, that She would do Every Thing, that depended upon Her, to satisfy His Majesty.' The King has no Doubt of Her Royal Highness's Duty, and Affection ; And of Her Zeal for the Support of His Majesty, against any Attack, that may be made upon any Part of His Dominions ; or of Her Royal Highness's sincere Intention, for the Support of the present System.

This Declaration from Her Royal Highness might make the greatest Part of this Letter unnecessary : But The King chose to have this Affair fully explained, that The Pensionary, of Whose good Intentions His Majesty is thoroughly convinced, might be the better enabled to remove those Difficulties with others.

I am &c^a.

HOLLES NEWCASTLE.

54. NEWCASTLE TO YORKE

(S. P. For., *Holland*, vol. 463)

Colonel Yorke. *Private*.
SIR.

Whitehall, April 17th, 1753.

The late Letters, from My Lord Albemarle, have brought Nothing, that can give any Room to guess, what may be the final Resolution of The Court of France, upon the Two Material

Points, now depending ; The Election of The King of The Romans ; and the particular Disputes with The King of Prussia. Mons^r. de St^t. Contest varies His Manner of Talking, almost in Every Conversation. Sometimes He talks plausibly, and pretty Satisfactorily upon Both Points ; And, afterwards, in the next Conversation, appears as difficult, and as unreasonable, as ever. I think, Their present View is, Not to break the Peace ; But The King of Prussia will certainly carry Them great Lengths, If He shall think proper to insist upon it ; And, therefore, We should always endeavour to prepare for the Worst.

I am, &c^a.

HOLLES NEWCASTLE.

55. YORKE TO NEWCASTLE

(*S. P. For., Holland, vol. 463*)

Private.

MY LORD.

Hague, May the 8th, 1753.

By a Conversation I had a few days Since with the Grand Pensionary, I found he had received Letters from Mons^r. Marselis, who is employ'd at Paris in the Negotiation for a new Treaty of Commerce between France and the Republick, in which he gives him the following account of what had past between him and the Marquis de St^t. Contest ; The latter told Mons^r. Marselis, that England having declared that the Subjects of Their High Mightinesses were at liberty, to take on board their Ships Goods belonging to the enemies of Great Britain, by virtue of the Treaties Subsisting between the two Nations, His (Mons^r. St^t. Contest's) Court demanded, that Their High Mightinesses should insist with that of England, upon the restitution of all the goods of French Subjects, taken under the Flag of the States, and condemned during the last war ; That on the part of France, as Soon as that Restitution was obtained, His Most Christian Majesty would give up the alterations proposed by them, in the 23^d article of the Project of a new Treaty of Commerce. As the Pensionary seemed to imagine, that England had made some new Declaration on this head, at the Court of France, I told him that I had never heard of any such thing, but supposed what Mons^r. St^t. Contest had said to Mons^r. Marselis, was founded upon the answer to the King of Prussia's Memorial &c. which the Earl of Albemarle had communicated, by the King's order, to the French Ministers, in which Paper the proper distinctions are made, between the Right of Neutral Powers, founded upon

the *Law of Nations* only, or establish'd by particular Treaties ; That as our Treaties with the Republick were clear and in full force, I did not see what necessity there was for our entering into any discussion with France upon that head, & that we had never disputed anything, but the abuse of those Treaties. That the Republick had great reason to be Satisfied with the explicit manner, in which their Right was avow'd in the answer to His Prussian Majesty ; and as all Europe was in possession of it, no Power could dispute the authenticity of it. I found however, that the Pensionary had a mind, that, in order to facilitate their coming to a Conclusion with the Court of France, England should make some Declaration to the Republick upon this head, which they might make use of in their Negotiation, and seemed to think, that we could not refuse complying with their wishes in this particular. As I suspect, the Pensionary may Speak more particularly to me on this Subject, and may make some application to His Majesty about it, I thought it right to prepare Your Grace for it ; but as our Conversation hitherto has been quite general, I do not know in what manner he may think proper to apply, and I thought it best to avoid entering into particulars, or encouraging him to take this Step, which the Pensionary seems much inclined to.

P.S.—In Case the Pensionary shall make the application I have mentioned, (w^{ch} I am inclined to think he will,) does not Your Grace think I may be founded, in demanding to see the Project of their Treaty of Commerce ?

J. Y.

56. YORKE TO NEWCASTLE

(S. P. For., *Holland*, vol. 463)

Private.

Hague, May the 11th, 1753.

MY LORD,

The Pensionary has begg'd me to transmit the inclosed *Pro Memoria* to Your Grace, & to desire You would be so good as to lay it before the King, not as a Publick Request to His Majesty, in the name of this Government, but as a Private one, because he is desirous to know the King's Sentiments upon the affair, before he takes any further Step. Mons^r Stein hopes, that what they wish may not meet with much difficulty, and he thinks that such a Declaration as he specifies in his Paper, would enable them to conclude their Treaty of Commerce with France, without further loss of time. I told the Pensionary, that I could say nothing more to him on the Subject, than when he first mentioned it, but that I would immediately transmit his Paper to Your Gracc.

Copie.(S. P. For., *Holland*, vol. 463)

Pro Memoria pour Monsieur le Colonel Yorke, Ministre Plenipotenciaire de Sa Majesté Britannique.

Dans nôtre negociation Sur le renouvellement du Traité de Commerce avec la France, on insiste de la part de cette Couronne, pour avoir des assurances, qu'en cas de guerre le Pavillon de l'Etat soit respecté, particulièrement par ceux, avec qui la France se trouvera en guerre, quoique les vaisseaux soyent chargés de marchandises ou d'effets appartenants aux Sujets de la France. Monsieur de Marcelis escrit à Leurs Hautes Puissances, que le Marquis de St. Contest lui a dit, que la Cour d'Angleterre avoit déclaré, qu'en vertu des Traités il est permis aux Sujets de Leurs Hautes Puissances, de transporter dans leurs vaisseaux des effets appartenants aux ennemis de l'Angleterre.

Cette Declaration étant conforme aux Traités qui Subsistent entre l'Angleterre et cet Etat, Monsieur Yorke est prié d'effectuer auprez de Sa Cour, qu'il Soit donné ici une telle Declaration, afin de faciliter par là nos negociations Sur le Traité de Commerce avec la France, et que cette Declaration puisse contenir, Que le Traité de Marine du 1. Decembre 1674. et tous les engagements qui Subsistent entre l'Angleterre et la Republique, Seront toujours Soigneusement et religieusement observés, Sans rien faire qui y Soit contraire, qu'en consequence il sera libre aux Sujets de Leurs Hautes Puissances, de transporter dans leurs vaisseaux les effets appartenants aux ennemis de l'Angleterre, et que la Cour Britannique est d'intention de s'y tenir exactement en toute occasion.

On s'attend ici, qu'il n'y aura aucune difficulté de donner cette Declaration, puisqu'on en a donné une pareille, l'année 1744. à la requisition de l'Etat.

57. NEWCASTLE TO YORKE¹(S. P. For., *Holland*, vol. 463)

Whitehall, May [18], 1753.

Colonel Yorke.

SIR,

The King having fully considered the Application made to You, by The Pensionary, and mention'd in your Two Letters, of the 8th & 11th Inst., and The *Pro-Memoria* inclosed in the Latter, relative to The Marine Treaty of 1674 ; His Majesty is of opinion, That the Proposal, made by Mo^r

¹ This is printed in *Archives de la Maison d'Orange-Nassau*, 4^e Série, Tome II, p. 269.

de St Contest, to Mo^r de Marcellis ; Viz^t. ' That Their High Mightinesses shou'd insist, with England, upon the Restitution of all the Goods of French Subjects, taken under The Flag of The States, and condemn'd during the last War ; And That, on the Part of France, as soon as That Restitution was obtain'd ; His Most Christian Maj^{ty} wou'd give up the Alterations, propos'd by Them, in the 23^d Article of The Project of a New Treaty of Commerce ' ; is not only New, as relative to another Power, no ways concern'd in That Negotiation ; But that it was made, also, to commit The King with The Republick ; To lay the Blame of The Miscarriage of Their Treaty of Commerce with France, (If that should be the Case,) upon His Majesty ; Or, If the Treaty should succeed, To lay, by That Means, a Foundation for a perpetual Neutrality with Holland ; and The King was sorry to see, that The Pensionary seem'd to adopt This Idea.

Mo^r de St Contest, and The Pensionary, can never, upon Reflection, think, that His Majesty wou'd give in to a Proposal of this Kind ; or lay Himself, or His Subjects, under such new & unnecessary Obligations. And the Manner in which it is mention'd in The *Pro-Memoria*, Viz^t *pour avoir des Assurances, qu'en Cas de Guerre, Le Pavillon de L'Etat soit respecté, particulièrement par Ceux, avec qui La France Se trouvera en Guerre*, has indeed the Appearance, as if The Court of France was upon the Point of coming to a Rupture with Us.

All Proceedings, relative to Treaties, made, singly, between The King, and The Republick, ought to be carried on, without the Intervention of any Other Power ; And, consequently, It wou'd be very improper for His Majesty to give any Declaration to The Republick, relating to Engagements, that may subsist between Them, in order to satisfy the Views of The Court of France, or to promote the Success of a Negotiation, entirely foreign to that Treaty ; Especially, when the immediate Tendency of such a Declaration, must be, to strengthen, or give some Countenance to, Demands upon His Majesty's Subjects ; And unnecessarily, and improperly, to confirm the Existence of a Treaty, upon which, sooner, or later, The King, and The Republick, must come to some amicable Explanation and Regulation.

The Pensionary was much mistaken in his Notion, that some new Declaration had been made, relating to this Treaty. Whatever Mo^r. de St Contest said, was, I suppose, founded only upon what was very properly mention'd by way of Distinction, in the Answer, given to The King of Prussia.

I believe, There are very few, if any, Complaints of The Dutch, now depending. I remember there was a favorable Determination for Them, some Time ago, upon an Appeal

from The Court of Admiralty ; And I am told, that the Subsequent Proceedings have been conformable Thereto. But I remember also, that the Inconveniences arising from The Treaty of 1674, appear'd, Then, so great, that it was the general Sense of The Council, before whom the Appeal was brought, that it wou'd be absolutely necessary to have some Explanation of that Treaty ; and I will venture to foretell, that, if nothing, of that Kind, is done ; Whenever This Country shall be so unhappy as to be engag'd in a War with France, England will begin, by insisting, that, pursuant to the Treaty of 1678, The Republick should immediately send the Succours, there stipulated ; And, within Two Months, declare War against France, also ; And in Case of Refusal, on the Part of Holland, will declare, that that Part of the Marine Treaty, which stipulates *Free Ships, Free Goods*, will not, and cannot be observ'd. And, indeed, if the Transactions, and Dispositions, of the Times, when that Treaty of 1674, and the following Treaty of Defensive Alliance, between England and Holland, of 1678, [were concluded ; which is the Basis of the present, and, I hope, perpetual Union between The Two Countries, are considered ; It will plainly appear, that Those, who wish'd well to that Union, took care, by the Treaty of 1678, to make that of 1674, ineffectual, or unnecessary.

For, tho' it is stipulated by the First Treaty, that one Power not being at War, shall be at Liberty to cover, & protect, the Goods of the Enemy of the Other, at War ; It is, as strongly, declared, & stipulated, by the Last Treaty, that that case shall never happen ; For, by the 5th Article of it, it is expressly agreed, that Two Months after War is declar'd against One Party, the Other shall be obliged to declare War also ; And that considerable Succours should be immediately sent to the Party at War ; And, during the Two Months, Good offices should be employed for making up the Differences. And I very well remember, that this Argument was most strongly insisted upon, here, during the late War, when the Dutch Ministers claim'd the full Execution of the 8th Article of The Marine Treaty of 1674.

That Treaty was made soon after the Conclusion of the Dutch War, in 1672. Holland, then, continued in War with France ; and It was weakly, & improperly thought, that this Country might have a Separate Advantage, from their different Situation, at that Time, in that respect ; Which was the real Cause of those Articles in the Marine Treaty. But, when once sounder Principles came to prevail here, and the great, & Essential Interests of England, & Holland, were found to be the same ; All these little, seeming, separate, Advantages were rejected ; and the solid Interests only con-

sidered ; And, upon that Principle, were the general Engagements taken by the Treaty of 1678 ; That, when War was once declared against either Power, The Other shou'd be obliged, in Two Months, to join in it. That Reasoning destroyed the very Foundation of the 8th Article of The Marine Treaty ; Shews, how necessary some new Explanation of it must be ; and consequently, how very improper It wou'd be for The King to give any Declaration, that might add new Weight, or Strength, to it. And I hope, that the present Government in Holland, will not so far adopt the Narrow Notions, which prevail'd in England, in 1674, as not to see the Impropriety of His Maj^{ty's} giving any such Declaration.

I must say, that the very End propos'd by it, (*viz^t*, the facilitating The Dutch Treaty with France,) wou'd not be a reason for the Thing desired. His Majesty will always be glad to promote the Interest of The Republick ; but The King will rather chuse to do it by any Measure, than by One, which may produce a closer Connection, between Them and France. And it is not yet forgot, that the Enjoyment of this very Treaty of Commerce, (the Renewal of which is now so much desired in Holland,) was a great Inducement, or, at least, serv'd as a Pretence for the Government in Holland, at that Time, to decline joining in the War against France, or taking any vigorous Measures, in support of their Allies.

You will make use of these Arguments with the Pensionary, and The Greffier, and with such Others, as may be necessary, to shew the Reasons, which prevent His Majesty from complying with what is now desired ; But You will assure Them, at the same Time, that The King's Opinion, & Resolution, upon this Occasion, are founded upon this unalterable Principle, that England & Holland, ought never to take separate Parts, but to have the same Interests, and the same Views, with regard to all Other Powers ; And that His Majesty will be always ready to shew His Friendship, and Affection, for The Republick, in any Instance, which may not be absolutely repugnant to that Principle.

P.S.—To save You the Trouble of looking Them out, I send You Copies of the Two Articles, mention'd in this Letter.

[*Endorsed*] Dra^t, to Col. Yorke. May 18th, 1753. (Separate.)

(*S. P. For., Holland, vol. 463*)

Extract of The Treaty between King Charles the 2^d and The States General. Concluded at London, Decem^r 1st, 1674.

ART. 8. *Conventum porro'est, quod quicquid à Subditis Regiæ Majestatis in Navem quamcunq;, ad hostes Dominorum Ordinum pertinentem, impositum esse deprehendetur, quam-*

vis de genere Mercium prohibitarum non sit, totum id Fisco addici possit ; *Cæterum é contra pro immuni atque libero habebitur omne id, quod in Navibus ad Subditos Regiæ Majestatis spectantibus immissum deprehendetur, etiamsi totum oneris, vel ejusdem pars aliqua, ad hostes Dominorum Ordinum justo proprietatis Titulo pertinuerit, exceptis semper Mercibus Contrabandis*, quibus interceptis omnia ex Articulorum præcedentium Mente & præscripto fient ; pari itidem ratione, quicquid à Subditis Dominorum Ordinum in Navem quamcunque, ad hostes Regiæ Majestatis pertinentem, impositum esse deprehendetur, quamvis de genere Mercium prohibitarum non sit, totum id Fisco addici potest ; *Cæterum é contra omne id, quod in Navibus, ad Subditos Dominorum Ordinum spectantibus immissum deprehendetur, pro immuni atq, libero habebitur, ETIAMSI TOTUM ONERIS, VEL EJUSDEM PARS ALIQUA, AD HOSTES REGLE MAJESTATIS JUSTO PROPRIETATIS TITULO PERTINUERIT, exceptis semper Mercibus Contrabandis*, quibus interceptis, omnia ex Articulorum præcedentium Mente, & præscripto fient.

Extract of The Treaty of Defensive Alliance, between The Crown of Great Britain & The States General, concluded at Westminster the 3^d of March, 1677/8.

ART. 5. Et en cas que la dite Attaque ou Trouble soit suivie d'une Rupture ouverte, *Celui des deux Alliés qui ne sera pas attaqué sera obligé de rompre deux Mois après la premiere Requisition de Celui d'entre Eux qui sera deja en Rupture*, durant lequel tems, il fera tous Devoirs par Ses Ambassadeurs ou autres Ministres, pour moïenner un Accommodement equitable, entre l'Aggresseur ou Turbateur, & l'Attaqué ou Troublé, et neanmoins donnera pendant le dit Tems un puissant Secours à Son Allié tel qu'il sera convenu par des Articles Separés entre Sa dite Majesté et les dits Seigneurs Etats Generaux ; lesquels, bien qu'il n'en soit fait aucune Mention au present Article, seront tenus & observés comme s'ils y etoient inserés ou écrits, demeurant toute fois après le dit tems de deux Mois expirés, au Choix de Celui des Alliés qui sera en Rupture de continuer à jouir du Fruit du même Secours, en cas que la Conjoncture du Tems, et la Constitution de Ses Affaires, Lui en fit preferer l'Effet à celui de la Rupture ouverte de Son Allié.

[*Endorsed*] Extract of Treaties of 1674 & 1678.

58. NEWCASTLE TO YORKE

*(S. P. For., Holland, vol. 463)*Whitehall, May 22^d, 1753.Colonel Yorke,
SIR,

I have had a pretty full Conference with Count Bentinck, upon the Two Points now depending; viz^t, The Two first Articles of Count Kaunitz's Project, and the Declaration desired, with relation to the Existence of the Marine Treaty of 1674, and I have told him, very plainly, that His Majesty could not recede from the Resolution which He had already taken upon that Head.

I may add, to what I formerly wrote, upon the last Subject; That, as those Two Treaties plainly are inconsistent, and the latter effectually destroys the Force of the Former; If the King was to give a Declaration, that the First Treaty exists; His Majesty would certainly insist, that the Republick should, at the same Time, give a Declaration, that, whenever England is at War with France, the Republick will immediately send the Succours stipulated, & declare War *also*, against France, within the Two Months prescribed. Upon this Condition, I believe We should hear no more of the first Declaration. And nothing, certainly, can be more Just, than that either One should not be insisted upon, or the Other not refused.

I am, &c^a,

HOLLES NEWCASTLE.

[Endorsed] Dra^t to Col^o Yorke, May 22^d, 1753.

59. YORKE TO NEWCASTLE

*(S. P. For., Holland, vol. 463)*Hague, May 29th, 1753.

MY LORD.

I have had a very full Conversation with the Pensionary, on the subject of the Declaration desired, with relation to the existence of the Marine Treaty of 1674. and must do him the justice to say, that he talk'd as warmly, and with as much zeal, for the System which His Majesty Supports, as I could wish him. I am desired however, to transmit the inclosed Paper to Your Grace, which has been approved by the Princess Royal and the Ministers of Her Conference. It

contains the reasons which induced them to make the Proposition, as they were in hopes, if the thing was feasible, to have been able, by that means, to have vindicated their Conduct in the Negotiation at Paris, upon a Treaty of Commerce, to the Satisfaction of this Country, and to have shew'd the French Ministers, that no arts, they could make use of, were able to Separate the Interests of the Republick from those of England. The Pensionary added, that after having transmitted their thoughts upon the Subject to Your Grace, if the thing could not be done, they were desirous to keep it as Secret as possible, as it might make some noise here if it was known. I had the honour to acquaint Your Grace, Some days ago, that I did not believe, if a Counter Declaration was insisted upon, that our friends would be very pressing for what they had ask'd, and I could plainly perceive, when I threw it out in the Conversation, that Mons^r Stein would not chuse to propose it ; So that I make no doubt, but he will be glad to drop it entirely after having removed any Suspicions, which he may think such a demand may have raised, as if there was any notion here, of listening to the System of a Neutrality for this Country.

P.S. Since writing the foregoing Letter, we have received the inclosed advice from Dunkirk, from one of the Engineers, who was sent there to examine the new works, and it is the most particular one I have yet seen. When we have a confirmation of these accounts, and have compared what is said to be doing, with what is Stipulated in the Treaty of Utrecht, I shall endeavour to get the Dutch Ministers to give their opinion, in relation to the measures necessary to be taken.

J. Y.

[*Endorsed*] Hague, May 29th, 1753. Colonel Yorke. R 31st

[*Enclosure*]

(*S. P. For., Holland, vol. 463*)

On s'est proposé deux choses en demandant à l'Angleterre la Declaration en question ;

1. D'oter à la France tout pretexte de retardement de la Conclusion du Traité de Commerce ;

2. De prevenir les mauvaises impressions que la France pourroit donner ici, Si elle pouvoit, avec quelque apparence de verité, rejeter Sur l'Angleterre la Non-reussite de cette Negociation.

Ce n'est pas à la requisition de la France que on [*sic*] demande cette Declaration. Elle n'y entre pour rien. On se propose Seulement de lever une difficulté qu'Elle forme. On voudroit la mettre davantage dans le tort, et faire voir par là au

Gouvernement de cet Etat, que la France ne cherche qu'à faire trainer l'affaire, et nullement à conclure ; qu'Elle fait naître tantôt un incident, tantôt un autre, pour perpetuer l'état d'incertitude, dans lequel se trouve le Commerce de la Republique avec la France, qui est Surtout préjudiciable à Ses intérêts, parcequ'on profite de ces circonstances, pour encourager et favoriser de toutes façons la navigation des Puissances du Nord.

Il a paru ici, que la demande faite à l'Angleterre ne préjudicie en rien à Ses droits, ni à Ses intérêts ; qu'elle est d'ailleurs parfaitement conforme aux Traités Subsistans entre les deux États.

Par le Traité de Marine du 1 Decembre 1674 la maxime generale, *Vaisseaux libres, Effets libres*, est établie. Cette regle est fondée Sur l'équité et Sur les principes de l'Interêt commun.

Le Traité d'Alliance de 1678. n'a pas derogé au Traité de 1674. On y a pris de nouveaux engagements, qui, dans certains cas, font cesser l'effêt de cette condition cy dessus *Vaisseaux libres Effets libres*.

Si apres deux mois écoulés, la Puissance attaquée demande que Son Allié en vienne à une rupture ouverte avec l'ennemi de la Puissance attaquée, dans ce cas il est evident, que la Regle *Vaisseaux libres, Effets libres*, ne peut plus avoir lieu, relativement à l'Aggresseur. Ce n'est plus le cas de l'article 8. du Traité de 1674. Jusques là donc, Si on le veut, le Traité de 1678 déroge à cet article 8. du Traité de Marine.

Mais ce dernier Traité peut et doit toujours Sortir un entier effêt, dans les quatre cas Suivans ; et par consequent, la Declaration en question peut avoir lieu dans ces cas ;

1. Pendant l'espace de deux mois, durant lesquels la Republique, en accordant les Secours Stipulés, travaillera à reunir les parties en guerre.

2. Si la Puissance attaquée prefere le Secours Stipulé, à une Declaration de guerre, qu'Elle a droit d'exiger de la part de Son Allié.

Ce n'est pas pour contrevenir à ce droit, qu'on demande la Declaration dont il S'agit. Cette Seule reflexion Suffit pour detruire l'idée comme Si l'on se proposoit de jeter les fondemens d'une neutralité perpetuelle, ou comme Si l'on avoit dessein de menager à la Republique un prétexte, afin de decliner les mesures vigoureuses pour le Support de Ses Alliés, le cas existant ; Il dependra toujours de la Puissance attaquée, d'exiger l'accomplissement de cet engagement, et Si la Republique venoit à manquer à cette obligation, Elle n'auroit aucun droit d'exiger de Son côté l'observation de l'article 8. du Traité de 1674, et l'effêt de la Declaration demandée.

3. Il y a un troisième cas, ou l'article 8. du Traité de 1674. doit avoir lieu ; C'est, lorsque la Partie qui reclameroit l'effèt du Traité de 1678. Seroit l'agresseur. Ce Traité n'est que Defensif. Ainsi dans ce cas là, celui de 1674. reste dans toute Sa force et vigueur.

4. Enfin le quatrième cas ou le Traité de 1678. n'altere pas celui de l'Article 8. du Traité de 1674. c'est lorsque la guerre se fait hors des Limites de l'Europe. Dans ce cas encore la Stipulation en question doit Sortir Son plein effèt.

On croit ne devoir pas entrer en discussion Sur les Reflexions que Milord Duc de Newcastle fait, Sur la diversité des conjunctures, et des motifs, qui ont donné lieu aux Traités de 1674 et 1678.

Sans examiner ce que l'Histoire d'Angleterre nous permet de Supposer Sur ce Chapitre, il paroît que les dispositions du Roi Charles II. étoient les mêmes en 1674 et 1678. et que c'est par le Parlement qu'il a été entraîné à faire les deux Traités.

Quoiqu'il en Soit, il est certain que dans l'année 1744. les choses n'étoient pas différentes de ce qu'elles sont aujourd'hui. Dans ce temps là la Declaration, telle que nous la demandons à present, a été donnée.

D'ailleurs, on ne peut que se louer de l'équité de l'Amirauté d'Angleterre, qui a jugé, dans différens cas, plusieurs prises conformément à ce principe, et à la teneur de l'article 8. du Traité de Marine.

On se flatte que l'Angleterre voudra bien réfléchir Sur ce qui vient d'être dit ; qu'Elle fera attention au but qu'on s'est proposé, en demandant la Declaration mentionnée, et surtout, à la maniere dont cette demande a été faite, confidentiellement, sous main, et sans avoir porté l'affaire en délibération dans les Assemblées de l'Etat ; et que cela même engagera à accorder encore la demande.

Quoique l'on ne soit pas assuré, qu'une Declaration pareille contenteroit la France ; toujours est il certain, qu'elle feroit un bon effèt ici, et que cela soutiendrait ceux, qui sont pour le maintien de l'ancien Systeme, en faisant voir au Public, que dans les occasions la Republique trouve dans l'Angleterre un appui, et un secours réel, dans ce qui l'intéresse le plus essentiellement.

Si ces nouvelles instances ne levent pas les oppositions et les difficultés, on renoncera à la demande, plus tôt que de s'exposer au risque de rendre publique une discussion, qui ne pourroit produire que de tres mauvais effêts.

[*Endorsed*]. Motifs pour demander une Declaration de la part de l'Angleterre Sur l'Article VIII. du Traité de 1674. Remis à Mons^r. Yorke, le 29 May 1753. In Col^o Yorke's Letter of May 29th. 1753.

60. NEWCASTLE TO YORKE

*(S. P. For., Holland, vol. 463)*Whitehall, June 1st, 1753.

Colonel Yorke,

SIR,

Last Night, the Mail arrived with your Letters of the 29th of last Month.

As The Dutch Ministers have given You a Paper containing their Reasons for desiring a Declaration of the Existence of the Marine Treaty of 1674 ; by which Paper They endeavour to invalidate those given, by The King's Order, for His Majesty's Refusal ; I have The King's Commands to consult His Servants, in order to form a proper Reply to it. But, in the mean time His Majesty has directed me to acquaint You, that He had never the least Suspicion that The Pensionary (of whose good & sincere Intentions for the Union of the Two Countries, & for the Preservation of the solid System of Europe, The King is so well convinced,) had any View, by this Demand, of laying a Foundation for a future Neutrality, or a closer Connection with France. And my Letters must have been ill wrote, or worse understood ; If they gave any Ground for such an Imputation upon a Minister, whose Conduct is most particularly agreeable to The King.

I can't, however, avoid saying, that the Paper does by no Means remove the Difficulty which was apprehended here. It admits, in Substance, the Inconsistency of the 2 Treaties of 1674, & 1678, tho' in some Immaterial Points, not ever likely to happen, They might Both exist at a Time. But there is not a Word to prove, that it is reasonable to ask a Declaration of the Existence of one, & not, at the same time, to give a Declaration of the Existence of the other. And there is not one Word that can be a Security to The King, that when once this publick recent Declaration is given by His Majesty, France will not (which They have declared so often to be their Intention) found a new Demand, or strengthen those already made, for pretended Satisfaction on French Goods supposed to have been taken on board Dutch Ships. And this they would do, directly for Themselves, if the Republick should refuse to make those Demands for Them.

The King is extremely sorry for these little Differences in Opinion, which will always happen, if only One Side of the Question is attended to. I know, the principal Reason is, to justify the Conduct of The Dutch Ministers to The Republick.

The King would be very glad to do it in any Instance, which would not directly prejudice His Majesty's own Subjects.

I am, &c^a,
HOLLES NEWCASTLE.

[*Endorsed*] Dra^t to Col^o Yorke, Whitehall, June 1st, 1753.

61. YORKE TO NEWCASTLE

(*S. P. For., Holland*, vol. 463)

Hague, June the 5th, 1753.

MY LORD,

I am honour'd with Your Grace's Letters of the 29. May, and 1st instant, the last of which arrived yesterday afternoon.

In consequence of what Your Grace is pleased to acquaint me with, by the King's direction, I have informed our friends, that they might expect a Reply to the Paper they had given in, containing their reasons for desiring a Declaration of the Existence of the Marine Treaty of 1674. They have desired me to repeat to Your Grace, the assurances that they never meant to persist in their demand, in case it should be disagreeable to the King, or that His Majesty, which is the case at present, should judge such a Declaration highly improper. The first intention was merely to ask the opinion of England, in order to see whether such a Scheme was practicable, and they were led into it by the order the King was pleased to give in April 1744. to the Lords of the Admiralty, to pay all regard possible to that Marine Treaty, in the Instructions they should give to their Cruizers. As the Dutch Ministers now See, that the thing is impracticable, at least without a Counter Declaration, which they would not chuse to propose at this time, they desire, if possible, that the affair may be entirely dropt, and that they will endeavour to make use of other arguments in their Negotiation at Paris. The Princess Royal, the Pensionary & Greffier, all desired me to beg Your Grace to cut the matter Short in it's present Shape, without entering into any further discussions, because, Should the King think proper, to order a Reply to be drawn up to their Paper, they shall be obliged to reply on their Side, that they may not be accused of having Set on foot such a Negotiation, and having dropt it with so much ease. The Pensionary was extreamly pressing, that I should endeavour to put an end to it, and at the same time, he desired I would assure Your Grace, that nothing would give him more real Satisfaction, than the Con-

firmation I gave him from Your Letter, that his conduct is most particularly agreeable to the King. It was not from any thing personal which was in Your Grace's Letters, that that Minister seemed to apprehend he was Suspected of inclining to a Neutrality, but from the general reception the Proposition met with ; and the Idea that it could be inferr'd from any thing that came from him, makes him still more Sollicitous to drop the affair in question.

I can Safely assure Your Grace, that Mons^r Stein is perfectly pleased with what You say upon his Subject, and if there was any uneasiness for a moment, it is now entirely removed, and I beg Your Grace to believe, that I was as attentive as possible, to efface any impressions of that sort, from the beginning.

62. NEWCASTLE TO YORKE

(S. P. For., *Holland*, vol. 463)

Whitehall, June 8th, 1753.

Colonel Yorke,

SIR,

I received, late last Night, The Favour of Your Letter of the 5th Instant. His Majesty very readily consents, to the dropping, entirely, any further Mention of the late Proposal, relating to the Existence of the Treaty of Marine of 1674, or of the *papier justificatoire* which the Pensionary gave you upon it.

The King is always sorry, when He cannot comply with The Wishes of The Princess Royal, and the Well-intentioned Ministers of the Republick ; And is now glad to find, that They are convinced, that His Majesty's not doing it, in this last Instance, proceeded Singly, from the Inconveniencies that must have attended such a Measure.

You cannot say too much by Way of Confirmation of what I have constantly wrote You, upon the Pensionary's Subject ; of whose Zeal, Ability, and Good Intentions, The King is so thoroughly convinced.

I am, &c^s,

HOLLES NEWCASTLE.

63. YORKE TO NEWCASTLE

(S. P. For., *Holland*, vol. 463)Hague, June the 12th, 1753.

MY LORD.

Our friends are extremely well Satisfied, that the King has been pleased to consent so readily, to the dropping entirely any farther mention of the late Proposal, relating to the existence of the Treaty of Marine of 1674; Any further discussion on that head might have had a bad effect here; and as they are so fully convinced of His Majesty's friendly Intentions towards the Republick; they would have been very sorry to have too Strongly press'd any measure, which could have been attended with any Inconveniences, such as Your Grace has represented the Declaration desired to be liable to. I shall not fail to take every occasion of confirming to the Pensionary the regard the King has for him, which his zeal and firmness for the Good System, I may venture to say, do certainly deserve.

64. HOLDERNESSE TO ALBEMARLE

(S. P. For., *France*, vol. 246)Whitehall, 8th February, 1753.H. E. The Earl of Albemarle. *Separate*.

MY LORD,

Some Time in the Beginning of last Spring, Mons^r Michel the Prussian Secretary declared to The Duke of Newcastle, in Form, that The King his Master had determined, to stop the last Payment due upon the Silesia Loan, upon Pretence of some Violences committed by English Privateers, on Prussian Subjects, during the Course of the last War, & of a Failure of Justice on the Complaints which were made, for obtaining Redress; And that His Prussian Majesty had established within His own Dominions an extraordinary Commission, for the Revision of the several Causes, which have been tried, & determined, by the Courts of Admiralty here; And that He should defalk, so much from what remains due to The King's Subjects, upon the Silesia Loan, as should appear to this new erected Court, equivalent to the Demands of the Prussian Complainants.

The Duke of Newcastle explained to the Prussian Minister, the Consequences, which would naturally result, from so offensive & unjustifiable a Proceeding, but equitable & temperate Remonstrances, have not had the desired Effect upon His Prussian Majesty: For on the 23rd of November

last, Mons^r Michel, presented a Memorial to The Duke of Newcastle, which was soon afterwards followed by a printed Book delivered also in Form, on the 13th of Decem^r entitled *Expositions des Motifs, &c^o*.

His Majesty in conformity to that Justice, which is the Basis of all The King's Actions, directed the Whole to be most seriously considered, and maturely weighed, by His Servants ; And an humble Report having been prepared by The King's Lawyers, Viz^t. Sir George Lee, Dean of the Arches ; And His Majesty's Advocate General ; Attorney General ; & Sollicitor General ; The same has met with His Majesty's most Gracious Approbation, and was, accordingly, delivered this Morning to Mons^r Michel, together with a Letter from The Duke of Newcastle to him, of which I have the Honor to send Your Excellency a Copy.

The King has farther commanded the said Letter & Report to be printed & published, & I shall have His Majesty's Commands, to transmit Copies of the whole to your Excellency, as soon as they can be finished, and am directed by The King, to prepare an ample Instruction for Your Excellency's Conduct, upon this extraordinary Event : But as the Duc de Mirepoix would probably have obtained a copy of The Duke of Newcastle's Letter to Mons^r Michel, Time enough, to be sent by the Messenger He will dispatch this Night, The King thought it proper, that Your Excellency should also have one for Your Information, However, You will avoid entering deeply into this Matter, for the present, with the French Ministers, untill I can have Time, to send You the whole State of the Case, and His Majesty's Pleasure thereupon ; But as Mons^r de Mirepoix writes upon this Subject to Night, it is possible, Mons^r de St. Contest, may begin a Discourse with You upon It ; And in that Case, You may acquaint Him ; that The King has determined, to communicate the Whole of this Proceeding to His Most Christian Majesty, as a Friend to both Parties, & to the Preservation of the Publick Peace : And that You have no Doubt, when the several Documents come to be transmitted to You, You shall be able, to vindicate the Moderation of The King's Answer, & shew the Injustice & Violence of The King of Prussia's Proceedings. Your Excellency will see this Letter is preparatory, to a more ample Instruction, & was only wrote, in order to give You Information, of what it is probable, the French Ministers will have an Account, at the same Time, that Your Excellency receives this Dispatch.

I am, &c.,
HOLDERNESSE.

[*Endorsed*] Dra^t. to The Earl of Albemarle, 8th February, 1753. Separate. Mo^r. Michel.

65. HOLDERNESSE TO ALBEMARLE

(S. P. For., France, vol. 246)

Whitehall, 15th Febr'y., 1753.

H. E. The Earl of Albemarle.

MY LORD,

When I had the Honor of transmitting to Your Excellency, a Copy of the Letter which the Duke of Newcastle had wrote to Mons^r Michel by His Majesty's Order, in Answer to the Memorial, which the Prussian Secretary had delivered to His Grace, on the 23^d November last, and accompanying the Report of The King's Lawyers, in Answer to a printed Book, entitled *Exposition des Motifs, &c.*, which had in like Manner, been presented to His Grace by Mons^r Michel, in Vindication of The King his Master's Resolution, of defalking the last Payment due to The King's Subjects upon the Silesia Loan: I gave You a short Sketch of what had preceeded the Presenting of the above-mentioned Memorial, & apprized Your Excellency, that The Duke of Newcastle had, by His Majesty's Command, represented to the Prussian Minister, in the most moderate, & decent Manner, the disagreeable Consequences, which must naturally result from so violent & unjustifiable a Proceeding; These Remonstrances were founded upon The King's Desire, of preserving the Publick Tranquillity, which has been the constant Object of all His Majesty's Measures, since the Conclusion of the Peace of Aix la Chapelle.—Of this the Court of France must be sensible, and the strong Declarations, which His Most Christian Majesty continues to make, of His earnest Desire, of co-operating with The King in the Preservation of the Peace, induce His Majesty, to communicate this extraordinary Transaction; And I dare say, You will not fail to enforce in a proper Manner, the Proof The King gives upon this Occasion, of His particular Regard & Friendship to His Most Christian Majesty, which proceeds from The King's Reliance upon the Equity & Justice of the Court of Versailles.

For tho' It is below The King's Dignity, to use Menaces, or to declare before Hand, the Manner in which He will resent an Insult, if any Power should dare to offer It, yet The King is desirous, that the Court of France, & the whole World, may be convinced of the Justice & Moderation of His Way of acting. Your Excellency will see, how scrupulously The King has commanded, the strictest Enquiry to be made, into the Nature of The King of Prussia's Claim; And had there been any

Foundation for the Complaints made, reparation would have been given, for any real Injury, which the Subjects of The King of Prussia, or any other foreign Power had received ; But that You may be fully apprized, of the whole State of the Case, I have His Majesty's Commands to transmit to Your Lordship, a Copy of the Prussian Memorial, & Sentence, & of the printed Paper, which accompanied It : And I will not give Your Excellency the Trouble of entering into the Particulars therein contained.

I also send You inclosed, a Copy, & Translation, of the Report, which The King's Lawyers have drawn up, in Answer to the above mentioned Memorial, in which all the Arguments made use of by the Court of Berlin, are so clearly, & fully refuted, & The Facts so exactly stated, that I can only refer Your Lordship to that excellent Performance, for Your full Information, upon this material Point ; and I shall only observe—

1st. That our Courts of Admiralty, proceed, solely upon the Law of Nations, where no particular Treaty takes place.

2ly. That by the Facts, quoted in the Lists, annexed to the Prussian Memorial, and the Arguments advanced, in support of the Complaints made by the Court of Berlin, it appears, evidently, that The King of Prussia has no Right, whatsoever, to make Reprisals upon His Majesty's Subjects.

3dly. And Thirdly, that even, if His Prussian Majesty, had a Right to Reprisals, stopping the Payment of what remains due, upon the Silesia Loan, would from the Circumstances of the Case, be unjustifiable.

His Majesty has no Doubt, but that His Most Christian Majesty's known Love of Justice, will make Him see this affair in It's true Light ; & that He will use His utmost Endeavours, to prevent His Ally The King of Prussia, from taking an Offensive Step, the Consequences of which are obvious ; It is therefore His Majesty's Pleasure, that Your Excellency should deliver to Mons^r de S^t Contest, and to such other of the French Ministers as You may judge proper, Copies of the Prussian Memorial, of the printed Paper, entitled, *Exposition des Motifs, &c^a*, of The Duke of Newcastle's Letter to Mons^r Michel ; and the Report of His Majesty's Lawyers ; And, that You should explain to Them, the Nature of the Case ; The Injustice, & Violence of the Proceedings of The King of Prussia ; And the Moderation of The King's Answer. It is also His Majesty's express Command, that You should, at the same Time, acquaint the French Ministers, that, if notwithstanding, the clear Light, in which this Affair is now put, and the evident Injustice of The King of Prussia's Proceedings, His Prussian Majesty should still persist, to retain the Money

due to The King's Subjects, on the Silesia Loan : the Payment of which The King of Prussia has taken upon Himself, in consideration of the valuable Cession of the Dutchy of Silesia, the Validity of which Cession, may be greatly affected by It ; It is obvious to foresee the evil Consequences, which will necessarily arise from It.

That The King makes this early Communication to His Most Christian Majesty, as a Friend to both Parties, & to the Preservation of the Publick Peace : And that His Majesty doubts not, but, from the Consideration of Justice, & Friendship, The French King will use His good Offices, with The King of Prussia, to comply with His solemn Engagements, to discharge the Debt due to His Majesty's Subjects on the Silesia Loan, which should have been done, by the express Conditions of the Contract, one Year, before any of these Facts happened, upon which His Prussian Majesty, has thought proper to retain the Money & refuse the Payment.

There is an End of all Publick Faith, if Proceedings like this are to be tolerated ; & His Majesty has so just an opinion, of the Equity of The Court of France, & of their real Desire, of maintaining the Tranquillity so happily established in Europe ; That The King will not suffer Himself to Doubt, but that His Most Christian Majesty, will interpose in a Case, where the most solemn Treaties are broke through, in a violent & unjustifiable Manner, without the least Colour of Reason. The Dignity of every Prince in Europe is concerned in this Question ; And I am persuaded, I shall very soon receive from Your Excellency, a satisfactory Answer to this Dispatch, which is of the most serious Nature, & requires Your utmost Attention.

I am &c^a
HOLDERNESSE.

[*Endorsed*] Dra^t to The Earl of Albemarle, 15th Febr̃y 1753.
K—g of Pr—a.

66. ALBEMARLE TO HOLDERNESSE

(*S. P. For., France, vol. 246*)

Paris, Wednesday 21st Febr̃y 1753.

MY LORD.

As the King of Prussia was often named in our Conversation, the transition to the Conduct that Prince had held towards His Majesty with respect to the Silesia Loan, naturally followed :—I deliver'd to him both the Prussian Memorial and the Answer with the Report of His Majesty's Lawyers, and

after a short recapitulation of the Fact, I proceeded to the Matter of Right, and made use of the Several Arguments Your Lordship had suggested to me which are so full and conclusive as to have left me nothing to add. I set His Majesty's great Moderation in Opposition to the Violence of His Prussian Majesty, and shew'd them both in the strongest light.

I observed to him the Injustice of this Prince's Proceedings, which had not the least Shadow of reason to colour it, the Danger which might result from them with respect to the publick Tranquility, if he persisted in them, and the evil consequences which must necessarily arise from them. And that the publick Faith and the Dignity of every Prince in Europe were interested in this Question.

I then acquainted him that the King made this early Communication to His Most Christian Majesty as a Friend to both Parties and to the preservation of the publick peace; and that His Majesty did not doubt but from Considerations or Justice and Friendship and their real desire of maintaining the Tranquility so happily established in Europe, the French King would use His good offices with the King of Prussia to comply with His solemn Engagements, and to discharge the Debt, which should have been done, by the express Conditions of the Contract, a twelvemonth before any of the Facts happen'd, which the King of Prussia has made the pretence of his extraordinary and unjustifiable Behaviour:—M. de S^t Contest heard me with the utmost Attention and received the papers I offer'd him with great Civility and shewed much Concern at what had happen'd.—He told me that he had already had a Copy of Mo^r Michel's Memorial and of the *Exposition des Motifs &c^s*, and that the Duc de Mirepoix had also sent him a Copy of the Duke of Newcastle's Letter to the Prussian Secretary; That he would maturely consider the Circumstances and make a faithfull report of them to His Most Christian Majesty who he assur'd me would be extremely sensible of the Mark of His Majesty's Confidence in applying to him thus early as a Friend and well Wisher to both Crowns and to the publick Peace, that His Majesty would find He was not mistaken in his opinion of The Most Christian King's Friendly Dispositions nor be disappointed in His Expectations and reliance upon them, he (Mo^r S^t Contest) having no doubt but the King his Master would interpose his Good Offices and use His utmost Endeavours to reconcile these Differences in such a manner as would be agreeable to His Majesty and that he would not fail acquainting me the next time he should see me with the Orders he should receive upon this Matter.

I gave a Copy of the Duke of Newcastle's letter to Mo^r Michel, and the Report of His Majesty's Lawyers to Mo^r

Puysieulx and to the Duc de Noailles, and as they are extremely desirous at this Court to see that piece, which as Your Lordship justly observes, is a most excellent performance, I beg the favour of you to send me by the first Messenger ten or twelve french copies, which I may distribute among the French Ministers and Councillors of State.

67. ALBEMARLE TO HOLDERNESSE

(*S. P. For., France*, vol. 246)

Paris, Wednesday 28th Febr^y 1753.

MY LORD.

I desired Mo^r de St Contest to tell me, whether he had taken into Consideration the Duke of Newcastle's Letter to Mo^r Michell, and the Report of the King's Lawyers, in answer to the King of Prussia's pretensions, and what account he had to give me of the Sentiments of the King, his Master, on this extraordinary Affair ; He said, that as it seemed to him to be of the highest consequence, it required a longer time, than he had had, since that Letter and Report had been left with him, to consider it with all the attention it deserved, and he therefore desired a few more Days might be allowed him to weigh it maturely ; after which he would make a Report of it, to His Most Christian Majesty, in Council, and acquaint me with their opinion upon it. From him I went to the Maréchal de Noailles, and Mo^r Puyzieulx, but had not the good fortune of meeting with either of them. The Eagerness continues to be very strong, at this Court, to see His Majesty's Answer to the King of Prussia, and I wait with Impatience to receive the french Copies of it, which I have taken the Liberty to ask of Your Lordship.

[P.S.]—I have reason to believe, that Mo^r St Contest's Delay is designed, to give him time, to receive an Answer, from Berlin, to a Dispatch, that was sent thither, by Messenger, immediately after I had given him the report, &c^a ALB.

68. HOLDERNESSE TO ALBEMARLE

(*S. P. For., France*, vol. 246)

Whitehall 1st March 1753.

H. E. The Earl of Albemarle. *Seperate.*

MY LORD,

The King was very well pleased with the Manner in which Mons^r de St Contest had received the friendly Com-

munication His Majesty had thought proper to make to the Court of France of the present Dispute with the King of Prussia ; It is not easy to know, what may be the Resolution, or Intention of His Prussian Majesty, as that Prince, during His whole Reign, has appeared to be but slightly influenced, by what are, and ought to be the most solemn Ties ; I have heard it surmized, and, perhaps, not without Foundation, that the King of Prussia has purchased, or is about purchasing the Pretensions which the House of Anhalt form upon the Dutchy of Lauenbourg, of which His Majesty, & His Ancestors have been long in Possession ; And that His Prussian Majesty was actually taking Measures, to seize, by Force, that Dutchey, in Consequence of the Abovementioned Purchase of frivolous Pretensions ; And it is supposed, that it is in Order to be ready to strike a Stroke, either there, or in some other Part of the King's German Dominions, that His Prussian Majesty is actually assembling Troops, which are to form Camps, in different Parts of His Frontiers ; Should that, really, be the Case, or should His Prussian Majesty, in Consequence of a Dispute with the Crown of England, & of such Measures, as may become Necessary for His Majesty, as King, to take, in Vindication of the Rights of His British Subjects, presume to attack any Part of the King's Possessions, His Majesty will, in that Case, have a Right to reclaim the solemn Guaranty given by the Court of France of all His Majesty's Possessions whatsoever, by the 20th Article of the Treaty of Aix la Chapelle, containing the following Words : 'Sa Majesté Britannique, en Sa Qualité d'Electeur de Brunswick, Lunembourg, tant pour Lui, que pour Ses Heritiers et Successeurs, et tous les États et Possessions de Sa dite Majesté en Allemagne, sont compris, et garantis par le present Traité de Paix.'—The Terms of this Article are too clear to admit of any Dispute, but as the King is still willing to believe, the Court of France to be sincere in their Professions of an Intention to maintain the Peace, His Majesty will not doubt of the real & efficacious Interposition of His Most Christian Majesty, to prevent the unjustifiable Step hinted at, & which would, of Consequence disturb the present happy Tranquillity of Europe.

I am &c^a

HOLDERNESSE.

[*Endorsed*] Whitehall, 1st March, 1753. To The Earl of Albemarle, Separate.—F^r Encampm^{ts}, K—g of P—a.

69. HOLDERNESSE TO ALBEMARLE

*(S. P. For., France, vol. 246)*Whitehall 14th March, 1753.

H. E. The Earl of Albemarle.

MY LORD,

I have received & laid before The King, Your Excellency's Letters of the 7th Instant, by which I find, that though You had received mine of the 1st, You had not as yet been able to pursue the Directions therein contained, and as You would not have an Opportunity of seeing Mons^r de St Contest 'till this Week, I am not to expect any material Answer from You to those Dispatches, 'till Sunday next, at soonest; In the mean Time, His Majesty has directed me to inform You by this Messenger, of the Intelligence His Majesty has received, that The King of Prussia is actually making several Warlike Preparations, such as buying up Horses, to serve for a Train of Artillery, and amassing large Quantities of Forage upon the Borders of His Majesty's German Dominions; These Steps denote something more than a Camp of Amusement, and it is scarce to be believed, that such Measures would have been taken, without an Intention of employing the Troops, which, it is known, are to take the Field to other Purposes than that of exercising Them, and keeping up Discipline by assembling together a considerable Corps, and seem to be meant either to deterr His Majesty from giving a vigorous Support to his injured Subjects, or to revenge, upon The King's German Dominions, the Measures, His Majesty may ultimately find himself obliged to pursue, in consequence of the violent, and unjustifiable, Detention of what remains due to the King's Subjects from The King of Prussia upon the Silesia Loan, under Pretences notoriously false and groundless; But The King of Prussia will find himself greatly mistaken, and will learn, that The King's Magnanimity, and Justice, will never suffer His Majesty to neglect, what the Interests of His British Subjects, or the Honor and Dignity of His Crown, may render Necessary, from an Apprehension of the Consequences which may result to other Parts of His Dominions. This Proceeding of the Court of Berlin is a national Insult; And should The King be drove to a Necessity of resenting It, (which however His Majesty is determined to postpone as long as possible), and should His Prussian Majesty, in consequence of such necessary Measures, form any Hostile Designs against any Part of His Majesty's Possessions in Germany, the World will see the unshaken Fidelity of The King's Subjects, and that they are ready to sacrifice their Lives and Fortunes in His Majesty's

Defence. But The King still hopes, that the Interposition of His Most Christian Majesty will prevent the fatal Effects of a Perseverance, on the Part of The King of Prussia, in the arbitrary & unheard of Proceeding, which he has threatened.

The King has no Doubt of the Justice and Equity of His Most Christian Majesty, of His punctual Performance of all His Engagements, or of the Truth of those Professions, which have been so often made by the Court of France, of their sincere Desire, to preserve & maintain the General Tranquillity of Europe, upon the Foot of the Definitive Treaty of Aix la Chapelle ; And is likewise persuaded, that The Most Christian King cannot entertain the least Suspicion, that His Majesty has, or will take any one Step, but what is calculated for the Maintenance of the Public Peace, unless absolutely forced to other Measures, in Vindication of the Rights & Possessions of His Subjects. If Proofs should be necessary, Your Excellency has but to recollect, what passed in the very beginning of Your Embassy, when the Insinuations of The King of Prussia had almost induced the Court of France to believe, that the King was encouraging, or at least not endeavouring to prevent, some of His Allies, from taking such Steps, as might have endangered the Peace of the North, and, in It's Consequences, that of the Rest of Europe. But I need not remind Your Excellency of what passed so long ago, when I can give You a recent Proof of His Majesty's still remaining in the same Intentions, by the Temper & Forbearance which His Majesty has hitherto shewn upon the Insults offered by The King of Prussia, and the Pains, His Majesty has taken, to convince that Prince of His Injustice, to give Him Time for Reflection, & by endeavouring to induce the Court of France, to shew him, the Necessity of retracting an unjust & violent Resolution. But though The King relies entirely on the Good Faith of France, & on the Efficacy of their Representations to the Court of Berlin, if they are in reality made with that Force & Energy, which the present Case requires, yet Prudence may dictate to The King, to take such early Measures with His Allies, as the Safety of His Dominions, & the Honor of His Crown, may require, And the Court of France must be sensible, that The King, vigorously supported by His British Subjects, (as in this Case He undoubtedly will be) has it in His Power, to retort any Injury or Violence, that may be offered.—But I must again repeat, that it is still The King's Wish and Desire to avoid, if possible, coming to Extremities, and therefore, tho', perhaps, some Powers might not be unwilling to lay hold of such an Opportunity of revenging former Quarrels, His Majesty will take Care, that no Step taken by any of His Allies, under His Majesty's Influence,

shall give just Cause of Complaint, or endanger that Peace, which The King is so desirous of maintaining.

Thus the Court of France seems to have it in their Power still to preserve the Tranquillity of Europe, for it cannot be supposed, that The King of Prussia would, of Himself, against the Advice & without the Support of France, follow Measures, which would undoubtedly expose Him to the Resentment of the Rest of Europe; And should His Majesty's German Dominions be attacked in consequence, and on Account, of an English Quarrel, such a Violation of the Laws of the Empire, & of Publick Faith, such a Proceeding would necessarily call upon the Court of France, even to join their Forces against the Agressor. But without recurring to antient Treaties, I need only quote the 20th Article of the Treaty of Aix la Chapelle, by which all His Majesty's Dominions, and Possessions, in Germany are expressly and solemnly guarantied by France, and His Majesty thinks Himself so certain of the Friendship and Good Faith of The Most Christian King, that He has been pleased to command The Duke of Newcastle and Myself, to talk in the most amicable and confidential Manner with the Duc de Mirepoix upon the present critical Situation of Affairs, and The King having been pleased, to permit us to set down in Writing (least any Mistake should arise on so delicate an Occasion) the Words, which We were suffered to make use of, I shall transcribe them for Your Excellency's Information, & You will please to read them over to Mo^r de St^t Contest, viz^t.

' Le Roy a ordonné au Duc de Newcastle, et au Comte de Holdernesse, de temoigner à Son Excellence Mons^r. L'Ambassadeur de France, combien Sa Majesté est Sensible à la Façon polie, et amicale, dont Mo^r. de St. Contest a reçu la Communication, faite par My Lord Albemarle, de ce qui s'est passé dernièrement, avec la Cour de Berlin; et dont S. E. Mo^r. Le Duc de Mirepoix s'est expliquée, à la même Occasion. Sa Majesté ne doute pas, qu'Elle ne trouve au Roy Très Chrétien tous les Sentiments, que puisse demander Son Amitié personnelle pour Le Roy, Ses Egards pour la Justice, l'Execution la plus scrupuleuse de Ses Engagemens, et le Maintien de la Paix generale. Aussi Sa Majesté se repose-t-Elle entierement là dessus.

' Mais comme Le Roy vient de recevoir des Avis, que Le Roy de Prusse fait des Preparatifs de Guerre, en amassant des Munitions, de l'Artillerie, et d'autres Choses necessaires, sur les Frontieres des Etats Allemands de Sa Majesté; Et qu'Il a acheté de Vieilles Pretensions sur de certains Païs appartenans au Roy, et garantis à Sa Majesté par l'Article 20 du dernier Traité d'Aix la Chapelle: La Prudence du Roy ne

Lui permet pas de regarder ces Demarches d'un Oeil indifférent, d'autant moins, qu'il y a Lieu de soupçonner, que les susdits Preparatifs se font, dans l'Intention de détourner le juste Appui, que Sa Majesté doit aux Droits de Ses Sujets de la Grande Bretagne, si notoirement envahis et lesés par les Demarches extraordinaires de la Cour de Berlin, ainsi qu'il n'a été que trop clairement prouvé par la Piece, qui a été dressée, en dernier Lieu, sur ce Sujet ; Ou même dans le Dessein d'attaquer les Etats Allemands du Roy, soit comme une Suite des Violences, deja commises sur Ses Sujets Anglois, ou en Revanche de La Protection, qu'on suppose pouvoir leur être accordée, par Sa Majesté sur leurs justes Plaintes.

'C'est pourquoi Le Roy espere, que Mr. l'Ambassadeur de France s'informerá au plútôt des Sentimens de Sa Cour sur cette Affaire ; et de quelle Maniere Le Roy Très Chrétien voudroit s'employer auprès du Roy de Prusse, pour le détourner d'une Demarche, qui est si injuste en elle-même, et qui, certainement, entraineroit, dans la Suite, une Guerre Generale. En cas que, contre toute Attente, Les puissans Offices de Sa Majesté Tres Chrétienne n'eussent pas l'Effet désiré ; Et que Sa Majesté Prussienne persistât toujours dans la Poursuite de Ses Violences ; Le Roy s'assure de la Garantie stipulée par les Traités ; par celui d'Aix la Chapelle, en particulier ; et nommément par le 20^e Article de ce Traité, dont le Duc de Newcastle, et Le Comte de Holderness, ont Ordre exprés de donner Copie à Mons^r. l'Ambassadeur de France, par laquelle Son Excellence verra, que *Tous Les Etats, et Possessions, de Sa Majesté en Allemagne*, sont expressément garantis par les Parties Contractantes, dont la France a été Une des Principales.

'Le Roy ne fait pas cette Demande, comme si Sa Majesté entretenoit le moindre Doute sur l'Exactitude de Sa Majesté Très Chrétienne à accomplir Ses Engagemens, et tout ce qu'on peut souhaiter d'un bon Ami, et d'un fidele Allié. Mais comme la Continuation de la Paix depend de la Resolution, que la France pourra prendre ; Cette Satisfaction une fois donnée, Le Roy sera non seulement tout-a-fait tranquilisé en Son particulier, mais sera aussi en Etat de tranquiliser les Autres, qui peuvent avoir pris de l'Ombrage des Demonstrations Militaires du Roy de Prusse, dans des Endroits suspects. Bien loin d'avoir en ceci, le moindre Soupçon sur les Dispositions pacifiques de Sa Majesté Très Chrétienne ; On souhaite seulement être mieux en Etat d'affermir la Paix, par le Moyen d'une Assurance amicale à cet Egard. Le Roy ne souhaite rien tant, que la Conservation de la Tranquillité Publique ; Sa Majesté est prête à y contribuer par tous les Moyens qui sont en Son Pouvoir ; Comme aussi à l'Entretien de l'Amitié,

et de l'Union, les plus parfaites, avec Sa Majesté Très Chrétienne. Mais on ne peut pas être surpris, dans la circonstance présente que Le Roy prenne toutes les Mesures convenables, pour défendre Les Droits de Ses Sujets, et pour la Sûreté de Ses Etats. C'est à Sa Majesté Prussienne à répondre des Suites, qui en peuvent resulter au Prejudice de la Tranquillité Publique.'

Your Excellency will observe, in how friendly a Manner, His Majesty has commanded His Servants, to express His Thoughts, and how desirous The King is, of receiving an Assurance of the Most Christian King's reciprocal Desire of co-operating with Our Royal Master in the Preservation of the Peace ; And It is The King's Pleasure, that Your Excellency should make this the Rule of Your Conversation with the French Ministers. I should hope that Mo^r de S^t Contest will have no Objection to pursue the Method which We have begun here, and will either permit Your Excellency to take down in his Presence, the Words He shall make use of, or direct Mons^r de Mirepoix to treat with The King's Servants here in the Manner We have done with him, which is the only Method of avoiding Mistakes.

I am sensible I could add many Considerations upon this Point, but as my Letter is already swelled to too great a Length, I will only add, that if the Court of France do not find Means, to prevent the King of Prussia from persisting in His Violent Resolutions, they may perhaps be obliged to support what they cannot approve, and all Europe be drawn into the Calamities of a War, without any material Views of Interest to the principal Parties concerned, but merely from the restless Ambition of His Prussian Majesty.

70. MIREPOIX, NOTE VERBALE

(S. P. For., France, vol. 246)

Note à lire à Mo^r. le Duc de Newcastle et à Mons^r. le Comte de Holderness.

Le Roy a vû avec la plus grande Satisfaction dans l'Ecrit remis à Mo^r. le Duc de Mirepoix par les Ministres du Roy d'Ang^{re} la Justice que Sa Maj^{te} Brit^e rend à Son Amitié pour Elle, à Son Attention constante et impartiale pour le maintien de la Tranquilité publique et à Sa Fidelité à Ses Engagemens ; Sa Majesté n'a pu voir qu'avec beaucoup de peine les premiers Indices de Division, qui se sont manifestés entre le Roy d'Ang^{re} et le Roy de Prusse. La Connoissance qu'Elle a des Sentimens de ces deux Princes pour la Conservation du repos

public, lui fait croire qu'il ne sera point alteré pour un Objet tel que celui qui fait le Sujet de la presente Contestation ; cependant Sa Majesté pour repondre à la Marque de Confiance que Sa Maj^{te} Brit^e lui donne en lui demandant Ses bons Offices, ne negligera rien de ce qui pourra dépendre d'Elle pour aplanir les Difficultés qui pourroient s'opposer à la Conciliation des Interêts des deux parties, au sujet des prises faites pendant la derniere Guerre par les Sujets de Sa Maj^{te} Brit^e sur ceux de sa Maj^{te} Pruss^e.

Quoique sa Maj^{te} connoisse en general les intentions pacifiques de Sa Maj^{te} Pruss^e, elle n'est nullement instruite des Dispositions de ce Prince sur le Fait particulier dont il s'agit ; Elle fera donner incessamment Ses Ordres à Son Ministre à Berlin pour eclaircir celles du Roy de Prusse avant de faire aucune Démarche formelle qui pût également la compromettre et le Roy d'Ang^{re} en meme tems.

En attendant Sa Maj^{te} ne sauroit dissimuler, que si la réponse de la Cour de Londres à l'exposé de celle de Berlin par rapport aux prises contient des principes solides et reconnus, elle en contient aussi d'autres qui ne peuvent etre adoptés par aucune Puissance et par aucune Nation commerçante ; Ainsi les bons Offices de Sa Maj^{te} auprès du Roi de Prusse ne sauroient la dispenser de continuer à poursuivre par les Voyes usitées par les regles etablies la Justice qu'elle croit legitimement dûë à Ses propres Sujets à l'occasion des prises faites sur Eux tant avant qu'après la Paix d'Aix-la-Chapelle. L'Equité et l'Impartialité de Sa Maj^{te} et les Dispositions dans lesquelles elle est persuadée qu'elle trouvera également Sa Maj^{te} Brit^e et Sa Maj^{te} Pruss^e doivent lui faire esperer une heureuse Issue des soins qu'Elle se donnera, pour parvenir à des moyens de Conciliation propres à effacer jusques aux moindres traces de Mesintelligence entre deux Princes dont l'Amitié lui est extremement chere.

Toutes les Puissances ont senti l'avantage et la Necessité d'assembler et de faire camper leurs Troupes en tems de Paix pour les entretenir toujours au maniment des Armes, aux Evolutions et à la Discipline Militaire ; Ainsi on ne doit prendre aucun Ombrage, ni rien conclurre des Arrangemens de cette Nature que la Paix que sa Maj^{te} et sa Maj^{te} Brit^e ont rendue à l'Europe et dont elle jouit si heureusement, soit en danger d'etre interrompue tant qu'elles seront l'une et l'autre occupées à prevenir et à ecarter tout ce qui pourroit la troubler.

7I. HOLDERNESSE TO ALBEMARLE

*(S. P. For., France, vol. 247)**Separate.*Whitehall 2^d April 1753.

Earl of Albemarle.

MY LORD,

I received on Sunday the 25th past, the Honour of your Excellency's Letters of the 21st, and laid them immediately before the King. His Majesty took particular Notice of the Account you give in your separate Letter, of what had passed with Mo^r de S^t Contest, upon the Subject of the Dispute with the King of Prussia, when that Minister assured you of the Punctuality with which His Most Christian Majesty would execute all His Engagements towards the King, and particularly Those relating to the Guaranty of His Maty's German Dominions, and expressed great Surprize at the King of Prussia's offering to buy up any Pretensions upon Territories in His Maty's Possession, Which, He understood were equally guarantied by the Treaty of Aix la Chapelle; And His Majesty was very well pleased with the solemn Protestations Mo^r de S^t Contest made, that the Most Christian King had Nothing so much at Heart, as the Preservation of the Publick Peace; But, as the French Minister was general in his Discourse to Your Excellency, and referred you, in some Measure, to what he should write to the Duc de Mirepoix, upon this Subject, I have the King's Commands to acquaint you with what has passed here, with the French Ambassador, since I had the Honour of writing to you last. That Minister, having been with the Duke of Newcastle and Myself, acquainted us, that His Most X^{tian} Majesty remained in the Resolution of contributing, all in His Power, to the Preservation of the General Tranquillity, and that He would, most punctually, perform all His Engagements towards the King, And, in Answer to the Paper, which he was suffer'd to copy for his Memory, he read over a Note, of which he likewise admitted a Copy should be taken, and I have the Honour to inclose it for your Information; And I will trouble your Lordship with some Remarks, which seem natural to occur, from the Contents of it. The Compliment, at the Beginning of this Paper, is contained in very general Words, & no Mention is made in it of the Specifick Guaranty of His Majesty's German Dominions, which was reclaimed, by the King, in Consequence of the 20th Article of the Treaty of Aix la Chapelle, a Copy of which Article was annexed to the Paper given to Mo^r de Mirepoix, and should have been taken Notice of: The Uneasiness which

His most Xian Maty expresses, at the first Appearances of a Division between the King and His Prussian Majesty, shews of what Consequence this Affair appeared to be, to the Court of France, tho' very soon afterwards, the Object is treated, as not being of a Nature to disturb the Publick Peace: Can the Court of Versailles imagine, that the King will look upon so atrocious and National an Insult, as the King of Prussia threatens, to be a Point of little Moment; But, however, the Most Christian King, in Consideration of the Confidence placed in him by His Maty, promises He will use His Endeavours, to reconcile the Interests of the two Parties, in what relate to Prizes, made by the English, upon Prussian Subjects, during the Course of the last War.

Surely, the French Ministers cannot seriously believe, that this is the Point upon which His Majesty desired the Interposition of the Court of France; And I must beg leave, in a few Words, once more to state the Case to Your Ex^{ty}. Courts of Admiralty, and an Appeal from them to the King in Council, are regularly established here, as in all other trading Nations; Complaints of a Violence, or Injustice, are, in all Countries, tried in the Courts, and Dominions of the Power, whose Subjects are supposed to have done a wrong, to those of another Power; and it is impossible to proceed in any other than this Method, which is universally received. The King of Prussia imagines His Subjects to be injured by the Decision of these Courts, and appoints an Extraordinary Commission, in His own Dominions, to examine the Determinations of the English; This, I will be bold to affirm, is the first Attempt of the Kind, that was ever made, and can only be an Examination *ex parte*, yet, in Consequence of this extra-judicial Proceeding, founded upon no former Example, nor any Colour of Right whatsoever, The King of Prussia defalks the Payment of a Part of the Silesia Loan; a Debt due to private Persons, to which, the King of Prussia, by the most solemn Treaties, has made Himself liable, upon a very valuable Consideration, and which ought to have been discharged long before His Prussian Majesty's Complaints existed, and ought not to have been detained, upon any Consideration whatsoever. This, My Lord, I call a National Affront, which is already given, and which requires Reparation; But the King, in Consequence of that Moderation & Justice, which is the Rule & Guide of all His Actions, directed a minute Enquiry to be made into these Complaints. —Upon Examination, the Facts Themselves, proved to be falsely stated, and the Reasonings & Conclusions drawn from them erroneous: A full, and, I will say, satisfactory Answer, was prepared, and, in the most friendly manner,

communicated to the Court of France : And what was it His Majesty desired of Them ? not that they should enter into a Discussion of the Point of Right, but, That they should induce, by Their Good Offices, the King of Prussia, to desist from a violent and unjustifiable Resolution ; Engage Him to pay what was due to the King's Subjects, and which is unjustly, and insultingly detained from Them, and, thereby, prevent the Consequences, which would probably result, from the Measures His Majesty might be forced to take, in Vindication of the Honour of His Crown, and of the Rights of His Subjects ; And His Majesty is still in hopes, that the most Christian King will make such effectual Representations to the Court of Berlin, as shall answer the Purpose ; but I must acquaint Your Exc^y that the King will not suffer Himself to be amused, or this Transaction to be drawn into too great a Length, which, I must confess, seems to be, in some Measure, the Meaning of the French Ministers.

But this is not all which the King meant should be represented to the Court of France ; It was proper, at the same time, That they should know, that if, in Consequence of the King of Prussia's Obstinacy, the King should be forced to take Hostile Measures ; And if, in Revenge for any just Reprizal, which the King has an undoubted Right to make, if the Silesia Loan is not discharged, any Part of the King's German Dominions should be attacked, even tho' under Pretence of an obsolete Claim purchased from another Prince, The King has a Right to reclaim the solemn Guaranty given by the Court of France, of all His Majesty's Possessions, by the Treaty of Aix la Chapelle, owned and confessed by the French Ministers, tho' not mentioned in Mo^r de Mirepoix's Paper, The Examination of which I will now continue.

It proceeds to say, that the Most Christian King, tho' informed in general of His Prussian Majesty's Pacifick Intentions, is not acquainted with that Prince's Disposition, as to this particular Fact, but that an Enquiry shall be forthwith made : The King is glad to find that Orders will be sent to the French Minister at Berlin, to learn the King of Prussia's Resolution, for it is upon that, that the present Question turns.

I am quite at a loss to understand the following Part of the French Paper, wherein it is said, that the Most Christian King cannot dissemble ; That tho' the Answer given by His Maty, may contain some solid & received Principles, yet it also contains others, that cannot be adopted by any trading Nation :—I cannot guess what those Principles are, which are thus objected to, and must desire your Excellency will get a further Explanation of these dark Surmizes, and

ambiguous Expressions, 'till when, it is impossible, to answer a hidden Meaning, which is neither understood, nor guessed at: The King was glad to find, that the Court of Versailles was resolved to solicit the Justice which They imagined may be due to French Subjects, on Acco^t of Captures, *par les Voyes usitées et par les Regles établies*. This is what the King has always contended for, tho' y^e French Court have endeavoured to introduce a new Manner of Proceeding; And it is in order to avoid a Deviation from y^e receiv'd Methods & established Rules, that the King has not permitted His Commissaries, to receive the List of Prizes offered by y^e French Commissaries, contrary to y^e Intent and Meaning of that Part of their Commission, & repugnant *aux Voyes usitées, et aux Regles établies*; And the Court of France may depend upon the most exact Justice on every lawfull Complaint which may be made, but I cannot see why this was introduced into a Paper relating singly to y^e Dispute with the King of Prussia, & y^e means of preventing the fatal Consequence which may result from it, if not timely prevented; unless the French Ministers intend to blend two Questions which materially differ, and to insist on a Compliance, on the Part of the King, to their unreasonable Demands, before they will employ Themselves to prevent His Prussian Maty from continuing in an unjust & offensive Resolution.

As to the Hopes, His Most Christian Majesty entertains of destroying the least Traces of *Mesintelligence*, between His Majesty, & The King of Prussia, that will entirely depend upon the Nature of the Representations, which shall be made to the Court of Berlin, and upon the Degree of Influence which those Instances may have upon His Prussian Majesty.

If the Court of France is sincere, in their Desire of keeping Peace, They seem to have it, in Their Power, but I believe Your Excellency will plainly perceive, it must be done by other Methods, and upon other Principles, than Those, laid down in the Paper which makes the object of this Letter.

As to the Excuse, which is made upon the Rumours of Military Preparations, The King takes it as a Civility, and receives it, as such.

I have endeavoured to throw together, in the shortest Compass, that the Nature of the Subject will admit of, the several Considerations, which have arisen upon what has passed with Mons^r de Mirepoix, and am to signify to You, His Majesty's Pleasure, that you should make Use, in a proper Manner, of the several Suggestions contain'd in this Letter, and particularly that you should state to Mo^r S^t Contest, in it's true Light, the Dispute with the King of Prussia, and the Consequences, which may result from it; That you

should shew the French Minister, the Kind of Interposition, which His Majesty expects, from the King his Master, who was applied to, only upon a Supposition of His real Desire of maintaining the Peace, which may be affected by the unheard of Proceedings of the King of Prussia.

Since writing what is above, I have received the Honour of Your Ex^{ty}'s Letter of the 28th of March, by which I find, that Mo^r de S^t Contest had given you a copy of the Note, which makes it unnecessary for me to send you one in this Letter; I wonder Mo^r de S^t Contest should not have given it you sooner.

Your Excellency will easily imagine, that the King was far from being pleased at the Stile of that Minister's Conversation with you, and, I must confess, I am a little surprized, you would not take up a Point of such Importance, with more Warmth, than appears by your last Letter. As to Mo^r de S^t Contest's saying, that Nothing is to be apprehended of the King of Prussia's having any Design whatever, on any Part of His Majesty's German Dominions, and that a Secretary, His Prussian Maty had at Hanover, had declared it to that Regency, it is Nothing to the present Question.

The case stands thus, The King of Prussia, by refusing to pay what remains due on the Silesia Loan, has done Us a National affront, and, hitherto, perseveres in it. The King was in hopes, the Court of France would engage That of Berlin, to desist from an unjustifiable Resolution, which may affect the Tranquillity of Europe; And if, in Consequence of such Measures as His Majesty may find necessary to take, if no Reparation is made for an Insult already committed, any Part of the King's German Dominions should be attacked, France cannot suffer such a Violence to be committed, without breaking through the solemn Guaranty, given by Them, of all His Majesty's Dominions & Possessions in Germany, by the 20th Article of the Treaty of Aix la Chapelle.

I flatter myself, I need add Nothing to this Letter, to enable your Excellency to talk fully with the French Ministers. I hope you will do so as soon as possible, and that you will dispatch a Messenger to me, with the Result of your Proceedings.

I am &c^s

HOLDERNESSE.

72. ALBEMARLE TO HOLDERNESSE

*(S. P. For., France, vol. 247)*Paris, Wednesday, 4th April, 1753.

MY LORD,

The only thing of consequence he acquainted me with, was, that he flatter'd himself, that the Differences between my Court and that of Berlin would be amicably accommodated; that the Courier, whom they had dispatch'd thither, with Instructions to their Minister in consequence of the Note that had been read to M. de Mirepoix, and which I had been directed to read likewise to M. de St. Contest, must have arrived there on Friday last.

He, afterwards, acquainted me, that Mo^r. de Mirepoix had wrote to him, that the Duke of Newcastle and Your Lordship, had been well satisfied, with the paper, that Ambassad^r had read to You, of which, I had the honour, of sending Your Lordship a Copy, last Wednesday. I express'd my Satisfaction at it, and that I expected I should receive some Orders, in relation to it, by the first Messenger.

ALBEMARLE.

73. ALBEMARLE TO HOLDERNESSE

*(S. P. For., France, vol. 247)*Paris, Wednesday, 11th April, 1753.

MY LORD,

The Most Christian King going to Choisy, Monday Morning, of which I had no Notice, all the French Ministers, except Mo^r. de St. Contest, took the Opportunity of coming to Paris, and I was therefore disappointed of seeing any other but him.

Your Lordship will have observed, by my Letter of the 4th. Inst^t., with what Inconsistencies and even Contradictions, I have to contend with here; either Mo^r. de Mirepoix does write, or Mo^r. de St. Contest asserts, of his mere Motion, that the Paper, read by the French Ambassador, to the Duke of Newcastle and Your Lordship, has given Satisfaction,—and yet, how different does the Case appear to be, in Your Lordship's Letter, to which I am now returning an Answer, and

why Mo^r. de St. Contest should not have given me a Copy of that Paper sooner, as Your Lordship observes (for he could have done it,) I am as much at a loss to guess as Your Lordship;—However, when he did give it to me, I made such Observations to him, upon it, as then occur'd to me, without having had the time to reflect upon the whole Matter as it deserved, and referring myself to such Orders, as I should receive, when it should come to be maturely weighed, and considered, at home. In consequence, therefore, of His Majesty's Commands, which I have since been honour'd with, I have represented to the French Minister, how different an Impression, Their Answer to the Note that had been given to Mo^r. de Mirepoix, had made, from that, which he had told me it had; And, as it was impossible for me to make use of better, or stronger, Arguments, than those contained in Your Lordship's letter, I summ'd them up to him, in as clear, and precise, a manner as I was able; and explained to him the actual State of the Case (which, it is unnecessary for me, to trouble Your Lordship here, with a Repetition of, word for word); and the Expectations His Majesty entertained, from the Most Christian King's desire of maintaining the Publick Peace, from his Fidelity to His Engagements, and, from His particular Friendship to His Majesty.

The French Minister confirm'd to me, in the most solemn manner, all his former Assurances, of the Sincerity of the Intentions of the King, his Master, in all these respects, and, in return to the Surprize, which I told him it had given not to see any mention made in Mo^r. de Mirepoix's Note, of the specifick Guaranty of His Majesty's German Dominions, he declared positively that tho' it had been omitted there, his Court did not make the least Difficulty to acknowledge it, and that they should be ready to give it, when the Case should exist.—That, as to the supposed Purchase, by the King of Prussia, of any Pretensions from any other Prince, he neither knew, or beleived, any such had been made, and he then repeated to me, that all His Majesty's Possessions in Germany were equally guarantied by the last Treaty of Peace.

As to what I had said of the Nature of Our Courts of Admiralty, and of the Principles and Methods of their Proceedings;—The unheard of Attempt, of the King of Prussia, in appointing an Extraordinary Commission, in His own Dominions, to examine the Determinations of the English;—His Defalking, in consequence, the Payment of part of the Silesia Loan, and the Affront, he had thereby given to the Nation, which required a Reparation;—And that if, in consequence of the King of Prussia's Obstinacy, the King should be forced

to take Hostile Measures, in vindication of the honour of his Crown, and of the Rights of his Subjects, and that any part of His Majesty's German Dominions should be attacked, the King had a right to reclaim the solemn Guaranty, given by France, by the Treaty of Aix-la-Chapelle.—The French Minister agreed with me in the first Points, relating to our Courts of Admiralty; but he said that particular Treaties furnished Examples, in which the general Maxims had been inverted; And, as to the rest, he said in general, that he had wrote, by His Most Christian Majesty's Orders, to the Court of Berlin, both, in relation to the Stoppage of the payment of the Silesia Loan, and on the military Preparations, making, by that Court, whose Answer they were in immediate Expectation of; that he was persuaded the King would not be forced to come to any *Voyes de fait*, and that all thoughts about it might be totally laid aside, at least 'till that Answer should be received; but that, if contrary to all Expectation, it should be finally thought unavoidable, and the King of Prussia should be attacked, which, he said, they should not look upon in the light of Reprizals, but as an *Aggression*; he then gave me to understand, that They had Engagements of Guaranty with that Prince likewise, who would, in that case, have a right to reclaim them.—I took him up very short in this place, by shewing him, that I could, by no means, agree with him, in his Notion of an *Aggression*, since it was unfortunately past a doubt, that the King of Prussia's violent, and insulting Proceeding was the first Step towards it, and that if France took it in any other light, they would draw upon Themselves the blame of all Europe, and the Ill Consequences that might follow. He added, that if it was possible for the Most Christian Majesty's Good Offices, to destroy any Misunderstanding between the Two Crowns, His Majesty might depend on His Most Christian Majesty's Efforts and leaving nothing undone that might contribute to so good a Purpose. But that he could not disguise that they had no greater Degree of Influence over His Prussian Majesty, than the King had over the Court of Vienna.—That, with regard to the Methods employed, by this Court, at that of Berlin, to attain the Ends proposed, it was impossible to condemn them, before they should be known, which, he observed they yet were not, and repeated, that he hoped they would have the desired Success.

On my pressing him to explain to me, what were the principles objected to, by his Court, in the Answer given by His Majesty to the King of Prussia, he said, that it was to that Maxim, endeavoured to be established, that an Enemy's Goods can be taken on board the Ship of a Friend, which,

he added, is contrary to the General Law of Nations, for that they had an undoubted right, (for example) to demand those Goods, which the Subjects of France had on board Dutch Ships, the Treaty of Commerce between England & Holland in 1674 having acknowledged that Doctrine.—This, I had no Difficulty to reply to, from the very Answer itself, that the Treaty he mentioned, was an Exception to the General Law of Nations, which, it inverted by a private Agreement between those two Powers, that did not affect any other Nation but themselves; and that if France had any Benefit to claim from thence, it could only be in consequence of such Treaties as subsisted between them and Holland; in which case, they were to apply to that Republick for Right, but that they had nothing in common with Our Treaties with the Dutch.—Mo^r. de St. Contest seem'd to enter into my reasoning, and if he did not formally give up the Point, at least he avoided saying anything further upon it, at present.

I then proceeded to express the Satisfaction it had given His Majesty, to find, that the Court of Versailles was resolved to sollicit, *par les Voyes usitées, et par les regles établies*, the Justice, which, they imagined, might be due to the French Subjects, on account of Captures. Mo^r. de St. Contest told me, without any further Explanation, at this Meeting, that, that was the Determination in which his Court would persist.

And, tho' it had not been seen in England why any mention of this Matter should have been made, in a Paper relating only to Our Differences with the Court of Berlin, yet he could not help thinking, it was no improper place, when, talking of Prizes, to say a word of their Intentions, with respect to a Question of an Analagous Nature, between Our Two Courts, tho' perhaps not exactly the same, nor depending on each other.

I concluded these heads of Our Conversation, by saying, I hoped, and depended, that his Court would take the several Matters, which have been the Subject of Our Conference into their most serious Consideration, as it was of the greatest Importance to the General Tranquility, which might be affected by it; And by assuring him, with some Warmth, that His Majesty would not suffer Himself to be amused, or this Transaction to be drawn into too great a length, and I therefore hoped His Most Christian Majesty would interpose His Good Offices, to bring the King of Prussia to hearken, as soon as possible, to Justice, and reason, and to desist, from persevering, in a violent Resolution which could not but be looked upon, as a National Insult, and in which he cannot but be considered as the Aggressor.—Mo^r. St. Contest desired,

I would depend on his setting before His Most Christian Majesty, every thing that had passed between us in a full and true light.

I took the Opportunity of acquainting him, that His Majesty took as a Civility, and received as such, the Excuse that had been made, upon the Rumours of military Preparations in this Country.—In answer to which, that Minister said he would assure me again, that their Encampments were with no other Intent than for the sake of disciplining their Troops.

Mo^r. de St. Contest came Yesterday to Town, to give Audience to the Foreign Ministers, at which I attended, having several Matters to speak to him upon, relating to the private Interests of some of His Majesty's Subjects; At this Meeting resuming the Subject of the *Voyes de fait*, &c^a, in which it was the resolution of his Court to pursue their Demands on Our's for Prizes.—He said, he would draw up a Note, which he would take an Opportunity of giving me, wherein he would explain, more particularly, what was understood, by those General Words.

I endeavoured, yesterday, to see the Maréchal de Noailles, and Mo^r. de Puyzieulx, in order to speak to them, on all these important Subjects, but I had not the Fortune to meet with either of them; I will seek some other Opportunity of doing it.

I have the honour to be with the greatest Respect,

My Lord,

Your Lordship's

Most obedient, and most humble Servant,

ALBEMARLE.

[Endorsed] Paris 11th April 1753. H. E. the E^l. of Albemarle.
R 14th By Colins. K—g of Pr—a.

74. ALBEMARLE TO HOLDERNESSE

(S. P. For., France, vol. 247)

Paris, Wednesday 18th Apr^l. 1753.

MY LORD,

Mo^r. de St. Conquest [*sic*] acquainted me, Yesterday, that the Messenger that had been dispatched, from this Court, to those, of Berlin and Munich, as mentioned in the letter, I had the honour of writing to Your Lordship, the 4th. Inst^t., was return'd; and that, it was with great pleasure he could inform me, that the King of Prussia accepts the Interposition, and Good Offices, of the Court of France, to adjust the Differences between the King and His Prussian Majesty; and that no time had been lost in sending a Messenger to Mo^r. de Mirepoix, with

this Account, and with Orders to communicate it to Your Lordship ;—and as M. de St. Contest told me, that, that Messenger went away last Monday, I conclude Your Lordship will have seen the French Ambassador before you have received this Letter.—I expressed my Satisfaction, to Mo^r. de St. Contest, at this Disposition of the King of Prussia, and that I hoped it would not be long, before He would hearken to reason, by putting an End, to the present Complaints, which were of such a Nature, that His Majesty would not suffer Himself to be amused, or this Transaction to be drawn into too great a length, which I thought might, in a great measure, depend on the representations, this Court should make, to that of Berlin, and on Their Credit, and Influence, with the King of Prussia.

I have the honour to be, with the greatest Respect,
My Lord,

Your Lordship's
Most obedient, and most humble Servant,

ALBEMARLE.

[Endorsed]. Paris, 18th April 1753. H. E. the E^l of Albemarle. R 22^d. K—g of Pr—a, K—g of the R—ns. P^r. Encampments.

75. MEMOIRE CONCERNANT LES PRISES SUR MER :
APRIL 20, 1753

(S. P. For., *Foreign Ministers in England*, vol. 9)

L'Attention que les Commissaires de Sa M^{té}. doivent apporter à l'exécution de la Commission qui leur a été confiée par le Roy leur maître, auroit seule suffi pour les exciter à s'expliquer avec M^{rs}. les commiss^{res}. de S. M. B. sur les principes, et les faits avancés dans la réponse qui a été rendue publique de M. Le Duc de Newcastle au Ministre de Prusse et du rapport qui y'est joint ; mais à ce motif se joignent les ordres qu'ils ont à cette occasion reçus du Roy relativement aux intérêts qu'ils sont chargés de discuter avec les Commissaires Anglois.

L'objet de ce memoire ne sera donc point d'entrer dans aucune discussion Sur les differends qui peuvent estre entre les Cours de Londres et de Berlin. Differends qui sont étrangers aux reclamations des prises dont sont chargés les commissaires de Sa Majesté ; Mais les principes, et quelques vns des faits exposés dans la réponse de la Cour Britannique interessent si essentiellem^t les droits du Roy et la propriété des biens de ses Sujets qu'il devient nécessaire et indispensable

de constater ceux de ces principes et de ces faits dont on demeure d'accord, et de s'expliquer Sur les Autres, afin de parvenir à se concilier sur des objets aussi importans.

Il auroit été à desirer qu'on eût commencé dans les conférences entre les Comm^{tes}. respectifs nommés et autorisés pour décider de la légitimité des prises, par convenir des principes qui doivent déterminer les décisions. On auroit pu alors se promettre de leurs conférences plus de fruit qu'elles n'en ont encore produit ; Mais l'éloignement qu'ont temoigné les Comm^{tes}. de Sa Maj^{te}. Britannique pour adopter et Suivre cette méthode, cesse par la publicité des principes que renferme la réponse de la G^{de}. Bret^e. au Roy de Prusse. Elle établit la plupart des Maximes qui sont à Suivre dans la matière des prises, et comme les deux Nations ne cherchent que la vérité et la justice et qu'il paroît que ce sont ces motifs qui ont principalement guidé les sentimens de M^{tes}. les Magistrats Consultés par S. M. Britannique, on a lieu de se flatter qu'on se conciliera enfin sur plusieurs points qui jusqu'icy étoient indécis entre les Commissaires.

Ce Memoire sera divisé en deux parties, on discutera dans la première les principes qui doivent déterminer la condamnation des prises et dans la seconde de quelle autorité Elles doivent être jugées.

PREMIÈRE PARTIE

DES PRINCIPES SUR LA CONDAMNATION DES PRISES

Article 1^{er}.

De la Légitimité des prises.

Tout ce qui concerne les prises se décide en général par les règles du droit des gens et par les Traités. C'est un principe reconnu de toutes les Nations.

On convient avec M^{tes}. les Magistrats Anglois que *lorsque deux puissances sont en guerre ensemble, elles ont droit de prendre réciproquement l'une sur l'autre, vaisseaux, Marchandises et effets qui se rencontrent en pleine mer ; Que tout ce qui appartient à l'Enemy est de bonne prise ; Mais que ce qui appartient à un amy ne peut l'être tant qu'il garde la Neutralité.* page II.

Les Magistrats Anglois ont tiré de ce principe plusieurs conséquences.

La première que les effets d'un Enemy peuvent être Saisis, quoy qu'abord d'un Vaisseau ami. Ibid.

La Seconde que les Effets d'un ami doivent estre rendus, quoy que trouvés a bord d'un Vaisseau ennemi. Ibid.

Ces deux conséquences paroissent naturellement résulter du principe que l'on vient de rapporter ; mais comme l'exception est souvent vne confirmation de la règle, on pourroit

peut estre soutenir que le pavillon ami couvre la Marchand^{es}. de l'Ennemy, et qu'au contraire le pavillon ennemi rend la Marchandise de l'ami Sujette à confiscation.

C'est peut estre par l'incertitude de ces conséquences, que la plupart des Nations qui ont fait des Traités de Commerce ont stipulé, que leur pavillon couvriroit les Marchandises de l'Ennemy, excepté celles de contrebande.

On ne prétend point décider si ces stipulad^{ns} sont vne exception au droit des gens, ou en sont vne confirmation, car les Traités peuvent estre interprétés en l'un ou l'autre sens, quoyqu'ils s'interprètent plus communément dans le dernier.

Cette disposition uniforme des Traités pourroit peut estre s'envisager comme vne Sorte de jurisprudence maritime avouée par les Puiss^{es}. de l'Europe ; Mais quoyqu'il en soit à cet égard, les Traités de la France tant avec l'Angl^e. qu'avec la Hollande sont formels sur la question dont il s'agit ; Et comme ces Traités font la Loy entre la France et ces deux Nations, Les Commiss^{es} du Roy n'ont aucun intérêt à discuter ce que le droit des gens seul pourroit précrire sur ce Sujet.

Les Magistrats Anglois ont tiré vne troi^se conséquence du principe cy-devant cité, Savoir *que les Marchandises de Contrebande qui se mènent à l'Ennemy quoyqu'apartenantes à vn amy sont de bonne prise, parce que fournir à l'Ennemy de quoy poursuivre la guerre, c'est rompre la Neutralité.* Ibid.

Cette dernière conséquence suppose que les Nations de l'Europe, sont d'accord sur ce que l'on doit entendre par Marchandises prohibées ou de contrebande, Si chaque nation prétendoit décider par vne volonté arbitraire de ce qui doit s'entendre par Marchandises de contrebande, et s'arroger le jugement de tout ce qui peut fournir à l'ennemy de quoy poursuivre la guerre, on pourroit envelopper sous ce vaste prétexte presque toutes sortes de Marchandises et d'effets.

On auroit attendu des Magistrats consultés par Sa M^{te}. Britannique, qu'ils auroient expliqué avec précision, ce qu'il faut entendre par Marchandises de Contrebande, et qu'ils les auroient nommées et Spécifiées, afin d'écarter solidement toutes les contestations qui pourroient s'élever sur la nature de ces Marchandises.

Au défaut de notions assez précises, on doit regarder les Traités faits entre les différentes Nations de l'Europe comme les énonciations les moins équivoques, et les plus impartiales de ce qu'elles ont pensé sur les Marchandises de Contrebande.

Or par les Traités, cette dénomination doit en général se restreindre aux Soldats, chevaux, [*sic*] armes et munitions de guerre, et aux vivres que l'on porteroit à vne place assiegée ou bloquée.

D'après cette observation qu'on ne croit pas que la Grande Bret^e. puisse contester avec justice, s'il y a eu des prises faites de Cargaisons de bois et de Chanvre, ainsy que de blés qui n'lassent point à des places assiegées ou bloquées, la condamnation de ces prises, seroit vne preuve que les Cours Angloises n'auroient pas toujours eû les Traités sous les yeux pour y conformer leurs jugemens.

Art^e. 2^d.

Des preuves requises pour la condamnation des prises.

Des Captures faites avant la guerre et des domages et intérêts pour les Navires pris injustement.

On adopte le principe établi par les Magistrats Anglois, que les preuves pour décharger ou condamner *vne prise*, doivent en première instance venir toutes du Vaisseau saisi immédiatement, comme sont les lettres de Mer qui s'y trouvent et les dépositions sous serment du Patron et des principaux Officiers du Navire. page 12.

Qu'en conséquence Il faut que tout Vaisseau soit complètement muni des documens de mer visités, et que l'originalité en soit évidente. p. 13.

Le memoire Anglois ajoute qu'il faut aussy que le Patron au moins du Navire soit au fait du vray Etat de sa charge et de sa destination. p. 13.

Nulle difficulté qu'il doit estre au fait de sa destination, mais quant au vray Etat de sa charge, on ne peut exiger de luy d'autre connoissance que cette portée dans les papiers de bord, et Surtout par les connoissemens * et les aquits des Douanes.

Vn Capitaine de Vaisseau ne fait point ouvrir les balles, caisses ou futailles de Marchandises, souvent même, et c'est fort ordinaire jl declare avant que de signer le connoissement, que le contenu des dites balles luy est inconnu, jl hazarderoit donc son Serment dans l'interrogatoire qu'on luy fait subir, s'il prétendoit répondre *du Vray Etat de sa Cargaison* ; Et le scrupule qu'il auroit à cet égard ne doit point empescher vne condamnation de domages et intérêts, lors que l'illégitimité d'une prise est d'ailleurs établie par les papiers de bord ou documens de Mer, et que ces pièces ne fournissent aucun fondement qui ait pû en autoriser la Capture.

Ces observations reçoivent leur application par raport aux

* Vn connoissemen est l'Ecrit par lequel le Cap^{ne}. ou patron reconnoît avoir charge dans vn tel Navire de telle Nation, tant de balles Caisses ou futailles de telles Marchandises Chargées par vn tel dans vn tel port, pour les conduire et remettre sauf les risques de la Mer à vn tel dans vn tel autre port, et tout patron doit en avoir Copie abord.

principes Suivans, exposés dans la réponse de la Cour d'Angleterre.

Que quand jl arrive que des Lettres de Mer sont fausses ou suspectes, que des papiers sont jetés en mer, que le Patron et les Officiers préparatoirement examinés, prévariquent visiblement que les lettres de Mer usitées ne se trouvent point à bord ou que le Patron et l'Equipage d'un Navire ne peuvent pas dire, si le Vaisseau ou la Cargaison apartiennent en propre à un amy ou Ennemi, le droit des gens, veut que suivant les différens degrés de manquement ou de suspicion, provenant de la faute du Vaisseau ou d'autres circonstances particulières du cas, un demandeur même à qui restitution se fait, paye pourtant les dépens ou du moins ne reçoive pas pas [sic] les siens. p. 13.

Ces principes seroient peut estre susceptibles de plus de précision et de justesse, car d'un côté la fausseté des Lettres de Mer, le jet des papiers, le défaut des lettres de Mer usitées, et la prévarication dans les réponses aux interrogatoires, c'est à dire, lorsque les témoignages et les pièces de bord se contredisent essentiellement et capitalement ; Toutes ces circonstances excluent la restitution des Navires et autorisent leur condamnation.

D'un autre côté les Soupçons des Capteurs sur la vérité des lettres de Mer, lorsqu'on ne peut les convaincre de faux, et l'ignorance ou l'incertitude de l'équipage sur la propriété de la cargaison, lorsque les connoissemens et les factures sont en règle, et qu'on ne peut pareillement les convaincre de faux, ne peuvent autoriser vne prise en sorte que celui qui l'a faite, est censé l'avoir faite à ses risques, et ne peut estre dispensé de payer, non seulement les frais et dépens, mais encore des dommages et intérêts. Que peut faire vn propriétaire neutre pour assûrer son bien, sinon de mettre tous les documens de mer en règle ; JI n'y a que ce point qui depende de luy. JI ne doit pas estre responsable des faux Soupçons que peut inspirer la cupidité des Capteurs, ni des réponses qu'on peut extorquer d'un Equipage, souvent grossier, soit en l'intimidant, soit en luy faissant [sic] des demandes captieuses ; soit même en corrompant vne partie de l'Equipage. Les menaces, l'astuce et la corruption ne doivent estre prejudiciables qu'à ceux qui les ont mises en œuvre, et non pas à ceux contre lesquels on en a fait usage.

Ces observations se trouvent confirmées par le principe qu'établissent les Magistrats Anglois et ou l'on ne trouve qu'un seul mot dont le sens ne soit pas assez déterminé ; Savoir que *s'il arrive qu'une capture se fasse sans fondement probable, celui qui la fait, est condamné aux dommages aussy bien qu'aux dépens. p. 13.*

Le mot de probable est celui dont le sens ne paroît point

assez précis. L'explication de ce mot retombe dans celle qu'on a faite sur les Soupçons. Si la défectuosité des pièces de bord, si quelque imperfection dans l'énoncé de ces pièces, quelque omission, quelque faute enfin, qui ne seroit point vne fausseté ou vne prevarication, donnent lieu au Capteur de présumer qu'il est fondé à s'emparer d'un Navire, Dès que cette probabilité provient du Navire pris, Elle peut influer sur la prononciation des dépens et dommages ; Mais si cette probabilité n'étant soutenüe d'aucune défectuosité dans les documens de Mer n'a de fondement que l'opinion qu'il a plu au Capteur de s'en faire ; on ne peut sans s'écarter des règles de la justice, et manquer aux droits des gens, refuser des dépens et dommages a ce luy qui a été injustement pris.

Le sentiment des Magistrats Anglois sur la légitimité des dommages et intérêts pour les prises faites injustement, donne la confiance de croire que désormais les Commissaires de sa Majesté Britannique se rendront à la justice d'accorder des dommages et intérêts pour les Navires françois, dont la capture sera reconnüe injuste.

On attend d'eux la même justice pour la restitution des prises faites avant la guerre. Ils avoient refusé constamment de se rendre aux Stipulations les plus expresses, les plus formelles du Traité d'Vtrecht sur la restitution des Navires qui pouroient avoir été pris en tems de paix, quoyque le Traité d'Aix la Chapelle porte que celui d'Vtrecht aura la même force que s'il y étoit inseré mot à mot. Les Commissaires du Roy avoient inutilement représenté qu'au commencement de la guerre, le Roy, qui par prudence avoit fait saisir les Navires Anglois qui estoient dans Ses ports, les avoit restitués par justice sur la demande qui en avoit été faite de la part de l'Ang^e. par le ministère de l'Ambassadeur des Etats généraux, et sur la promesse que l'Ang^e. en agiroit de même à l'égard des Navires françois. Vn argument si decisif et si peu susceptible de réplique, n'avoit cependant pu ébranler les Commissaires de Sa Maj^{té}. Britannique fermes dans leur opinion, dont ils ne se sont départis d'Eux mêmes que peu avant la publicité de la réponse de la Cour de Londres au Roy de Prusse ; Ils argumentoient ainsy, le Traité d'Aix la Chapelle porte que l'on restituera les prises faites depuis la cessation des hostilités ; Donc il exclue les prises faites avant la guerre, Mais il paroît que cette manière de raisonner, ou d'un principe affirmatif, l'on tire vne conclusion negative, n'a pas trouvé grace aux yeux des Magistrats éclairés qui ont été consultés par S. M^{té}. Brit^{ann}. puisque la Cour d'Angleterre fait aujourdhuy si publiquement l'aveu de la justice de restituer les Navire[s] françois pris avant la guerre et que même elle se fait honneur de l'avoir exécuté, ce qui est vray pour quelques cargaisons ;

Mais ce qui devient à juste titre vne assurance anticipée de la restitution d'un grand nombre de Navires que la France réclame au même titre.

C'est avec ces modifications qu'il faut entendre le passage de la lettre de M. Le D. de Newcastle où il est dit p. 7. *que les Tribunaux d'icy (C'est à dire) d'Ang^e. ne se sont pas même prevalus d'une guerre ouverte pour saisir ou retenir les effets de l'Ennemy lorsqu'il a paru que ces effets avoient été pris injustem^t. avant la guerre; Cette circonstance ajoute-t'il, doit faire honneur à leurs procédures, et montrera en même tems qu'il étoit aussy peu nécessaire que peu convenable d'avoir recours ailleurs à des procédures absolument inusitées.* Il n'y auroit aucune objection à faire contre ce passage, si la France n'étoit pas dans le cas de réclamer, et ne réclamoit pas depuis quatre ans, contre la condamnation illégitime d'un grand nombre de prises faites avant la guerre.

Mais on a désormais vne pleine confiance sur la restitution de ces prises, ainsy que sur celle des dommages, et intérêts pour les Captures faites sans fondement, Car les Commissaires Anglois n'y ont résisté jusqu'à present qu'à la faveur d'un raisonnement dont on a déjà fait sentir le peu de justesse. *Le Traité d'Aix la Chapelle, ont ils dit, porte la restitution des Vaissaux avec leurs Cargaisons. Donc il exclue les depens et les dommages et interests;* Cette Logique ayant été proscrire pour les prises faites avant la guerre, et n'étant pas moins contraire aux règles de l'équite qu'à tous les principes du droit des gens, on ne doit pas douter que les Comm^{tes}. Anglois en y'aisant des secondes réflexions, n'y renoncent formellement.

C'est vn principe fondé en justice, et qui est établi dans le mémoire de la Cour Britannique pages 4 et 16; que le droit des gens ne cesse de servir de règle entre deux Nations que lorsqu'il y'a vne dérogation par des Traités. Le Traité d'Aix la Chapelle n'a pas dérogé au droit de demander les indemnités que prescrit le droit des gens Lorsqu'on fait vne prise sans vn fondement valable, et par conséquent ce droit a conservé toute sa force, et doit avoir son exécution.

Art^e. 3.

Des exceptions aux principes du droit des gens en matière de prises.

Quoyque le droit des gens ainsy que disent les Magistrats Anglois, fasse pour la détermination des prises, la règle générale, cependant deux puissances peuvent par accord mutuel, et quant à Elles, la changer ou s'en écarter. Alors ce sont les exceptions et les changemens introduits par leurs Traités qui deviennent

la Loy pour les contractans, et le droit des gens n'a plus lieu entre eux qu'en tant que les Traités n'y dérogent point. p. 16.

C'est ainsy que par le droit des gens, lorsque deux puissances sont en guerre, tout vaisseau est sujet à estre arrêté, et examine pour voir à qui jl appartient, & s'il ne porte pas de la contrebande à l'ennemy ; Et que par des Traités particuliers, cette recherche a jusques à vn certain point été mitigée sur la foy et l'exhibition, ou de passeports solennels ou d'autres preuves de propriété attestées en bonne et due forme. ibid.

Il'y a aussy des conventions particulières qui tout au revers du droit des gens déclarent de bonne prise les effets d'un amy qui se trouvent abord d'un vaisseau ennemy et rendent libres les effets d'un ennemy, qui se trouvent abord d'un Vaisseau Amy. p. 16 et 17.

On ne contestera aucun de ces principes qui sont avancés par les Magistrats Anglois dans leur raport à S. M. B. ; mais soit que les effets d'un amy à bord d'un vaisseau ennemi soient libres en vertu du droit commun des gens ; soit qu'ils ne doivent l'être que par les Stipulations des Traités ; Il est certain qu'en conséquence même des principes avancés par la Cour Britannique,

Tous les effets appartenans a des françois et pris sur des Vaisseaux hollandois auraient du estre libres et n'être point condamnés en Angl^e. Si les Tribunaux des amirautez d'Ang^e. avaient Suivi exactement les règles qui doivent s'observer de Nation à Nation.

Voicy en effet comme s'exprime l'Art^e. 8 du Traité de Londres de Commerce et Navigation entre Charles 2. Roy d'Ang^e. et les Etats Generaux des Provinces unies du 10. Xbre. 1764.

Omne id quod Navibus ad subditos dominorum ordinum Spectantibus, immissum deprehendetur pro immuni atque libero habebitur, etiam si totum oneris vel ejusdem pars aliqua ad hostes Regiae Majestatis justo proprietatis titulo pertinuerit, exceptis semper mercibus contrabandis.

Tout ce qui se trouvera Sur des Navires appartenans aux sujets des États généraux sera libre et exempt encore que toute la Cargaison ou vne partie apartint à juste titre de propriété aux Ennemis de Sa Maj^{te}. excepté les Marchandises de contrebande.

Suivant les règles de la bonne foy les Marchandises des françois doivent estre libres et exemptes Sur les Vaissaux hollandois, Les Negocians françois ne les y'ont fait charger, que dans la présomption que les Anglois fidèles à leurs engagements, respecteroient les Traités qu'ils avoient avec les hollandois ; ce que les Magistrats Anglois ont dit des Navires pris avant la guerre, qu'on n'a jamais pretendu les confisquer

quoyqu'ils apartinssent a des Sujets d'un Ennemi actuel, et se trouvassent entre nos mains, parcequ'ils n'y eussent point été alors sans le tort qui leur avoit été fait auparavant, à son application aux Marchandises trouvées sur les vaisseaux hollandois, parce qu'elles ne s'y seroient pas trouvées sans les Traités qui les déclaroient libres et exemptes, et dont la bonne foy faisoit présumer l'exécution.

D'après ces observations on est en droit d'attendre que l'Ang^e. restituera toutes les Marchandises appartenantes aux françois qui ont été prises sur des Navires hollandois, ou autres Navires de Nations neutres qui ont avec l'Ang^e. des traités pareils à ceux qui sont entre Elle et la hollande.

Prétendre que les françois n'auroient point droit de les réclamer ce seroit aller contre la bonne foy avec laquelle on doit exécuter ses engagements ; Car si l'on peut manquer à de pareilles Stipulaõns, sans que personne ait droit de s'élever contre vne infraction aussy manifeste, les Traités sont illusoires.

Si ce sont les hollandois qui ont le droit d'en former la réclamation, jls ne peuvent se dispenser de la faire sur la réquisition de la France, et de différer sa demande à l'Ang^e., ce qui revient au même, que si la France la formoit directement et immédiatement ; et ce seroit par consequent incider que d'en élever la difficulté.

Si l'Ang^e. résistoit à cette demande, ce qu'on ne présume pas d'après les principes qu'elle a établis, ce seroit vne Loy bien dure et bien injuste que celle en vertu de laquelle on prétendroit que la Clause qui feroit perdre aux Nations neutres les effets qu'elles auroient chargés sur des Vaisseaux ennemis, devoit avoir son exécution, tandis que la clause qui affranchiroit les effets ennemis chargés sur des Navires neutres, ne devoit pas l'avoir.

SECONDE PARTIE

DE QUELLE AUTORITÉ ON PEÛT JUGER LES PRISES FAITES SUR MER

Le sisteme de l'Ang^e. sur cette question, est que les prises doivent estre jugées en dernier ressort de l'autorité de la puissance dont les Sujets sont les preneurs.

On ne peut adhérer à ce principe qui détruit par le fondement le droit des gens.

On pense au contraire que Suivant le droit des gens, les prises ne peuvent estre jugées, que provisoirement par les Tribunaux de la Puiss^{co}. dont les Sujets sont les preneurs.

Qu'elles ne peuvent estre jugées définitivement de l'autorité seule de la Puissance dont les Sujets sont les preneurs, ni de celle dont les Sujets ont été pris.

Que dès qu'une des deux Puissances réclame contre les Jugemens rendus par les Tribunaux de l'autre, ou qu'elle demande qu'on nomme des Commissaires respectifs pour décider des prises, on ne peut sans déni de justice refuser d'en déferer la décision à des Commissaires.

Et que dans le cas où ces Commissaires ne peuvent se concilier, l'esprit de prudence, d'impartialité et de justice, doit porter les deux parties à choisir vne Puissance arbitre plutost que de prendre la voye des reprësailles qui est indiquée par les Traités et qui conduit presque jnfailliblement à la guerre.

Cette opinion paroît la seule qui puisse concilier l'amour de la paix, avec les principes du droit des gens sur l'indépendance mutuelle des Puissances de l'Europe.

Lorsque les Jugemens des amirautés et des Cours Supérieures sont prompts et peu dispendieux; Lorsque ces Jugemens sont non seulement justes et équitables, mais que la justice et l'équité en sont reconnues par toutes les parties interessées, et qu'elles y acquiescent, Lorsqu'enfin il n'y a aucune réclamation, et qu'aucune des parties ne demande des Commissaires, l'acquiescement aux Jugemens rendus ne donne aucune atteinte au droit des gens. La méthode de Juger les prises par des Cours qui sont proposées a cet effet, est usitée en France. Les Jugemens s'en rendent presque sans aucun frais, l'expédition y est prompte, et les Etrangers y ont volontiers recours; Mais c'est vne jurisdiction qu'ils ne subsissent que volontairement. On n'a point prétendu qu'ils y fussent obligés. S'il y a eu rarement des Commr^{es}. nommés pour la décision des prises c'est que rarement la demande en a été faite au Roy; Jamais elle n'a été ni contestée ni refusée.

Les Magistrats Anglois consultés par sa Maj^{te} Britannique ont cité sur la question présente dans le rapport qu'ils ont fait au Roy leur Maitre. p. 11. les sentiments et l'Autorité d'Heineccius fameux Jurisconsulte digne des éloges qu'ils luy ont donnés.

Ils ont prétendu dans le même raport *que la Méthode de faire juger les prises par les Cours d'Amirauté avec faculté d'en apeller à vn Tribunal supérieur, est indiquée confirmée et autorisée par un grand nombre de Traités.* *ibid.*

L'examen de ces deux assertions est nécessaire pour éclaircir cette matière on examinera en suite les raisons particulières sur les quelles l'Ang^e. apuye son opinion.

Art^o. 1^{er}.

Examen du Sentimen d'Heineccius

Les Magistrats Anglois ont cité au soutien de leur opinion, p. 11, les Sections 17 et 18 du second Chap^o. du Traité d'Heineccius sur la prise des Navires qui portent des Marchandises prohibées.

Pour bien prendre l'esprit d'Heineccius, il faut examiner ce que renferme la Section 16. qui précède les deux sections citées par les Magistrats Anglois.

Jl établit dans la Section 16. que les prises, ne sont à la disposition des preneurs qu'après vne Sentence rendüe au Tribunal des causes Maritimes.

La raison qu'il en allègue, c'est que les gens de Mer sont également indociles et avides ; et que sans égard pour le droit ils se prévaudroient d'un prétexte spécieux pour s'emparer des Navires Amis, S'ils n'étoient obligés de rendre compte de leurs prises aux Magistrats.

La Section 17 porte que c'est par cette raison que les Princes ont ordonné par leurs Edits que les prises ne seroient adjudgées qu'après avoir été déclarées bonnes par les Cours d'Amirauté.

Heineccius observe que la discussion y' est sommaire ; Qu'en Hollande on ne permet point de Duplique, qu'à Lubec on proscrit de ces causes les avocats &c.

La Section 18 dit simplement qu'aussitost que la Sentence est rendüe, la prise devient la propriété de ceux qui l'achètent.

Tout ce qu'Heineccius dit dans ces différentes sections se renferme dans les bornes d'une police intérieure et civile. Jl ne s'agit que d'une instruction sommaire et qui ne seroit nullement suffisante vis à vis d'une Puissance Etrangère qui prendroit fait et cause pour ses Sujets. Tous ceux qui ont quelque connoissance de la manière dont se jugent les prises, Savent que la plupart même se jugent sans parties contradictoires, sur le simple vü des pièces de bord et sur l'intérogatoire de l'Equipage.

Ce qu'on peut résumer du Sentiment d'Heineccius, C'est que Suivant ce Jurisconsulte chaque Nation a prévu avec sagesse et prudence que la propriété d'une prise devoit rester en suspens jusqu'à ce qu'il fut intervenu un Jugem^t. sur la légitimité de la Capture parce que s'il avoit suffi de prendre pour pouvoir vendre et disposer, l'avidité des gens de Mer, n'auroit point eu de frein ; Jls auroient également pillé ami et ennemi, et les Armateurs auroient dégénéré en pirates et forbans.

Mais suit jl de la, comme prétend la Cour Britannique, *qu'on ne peut prendre connoissance des affaires de cette nature*

que dans les Tribunaux de la Puissance chez la quelle la saisie se fait p. 8. Et en peut'on conclure que la puissance dont les Sujets ont perdu leurs Navires, et effets, ne peut demander sinon que ses Sujets soyent jugés, et qu'elle n'a pas le droit d'examiner s'ils ont été injustement dépouillés, et d'insister sur vne légitime réparation.

Il s'en faut bien qu'Heineccius ayt avancé vne proposition aussy contraire au droit des gens.

On convient avec les Magistrats Anglois, que lorsque les deux parties sont censées reconnoitre la justice de la Sentence, le procès est terminée [*sic*] p. 18. Mais le cas dont jl S'agit est ce luy où l'on se plaint de l'injustice de la prise, et de celle du jugement qui l'a declarée légitime.

Suivant ces Magistrats la seule voye régulière d'en faire rectifier et réparer les erreurs est par apel au Tribunal Supérieur du même souverain. p. 10.

Mais en vertu de quel droit peut on obliger vn étranger à Subir plusieurs degrés d'une jurisdiction dont jl n'est point justiciable, surtout si par là on le constitue dans des frais certains et très considérables, pour attendre vn jugement très incertain, et que même jl doit présumer luy estre contraire, puisqu'il a déjà essuyé vne condamnation dans vn premier Tribunal de la même Nation.

D'ailleurs c'est éloigner la difficulté d'un degré, et ce n'est point la résoudre. Car si ce Tribunal supérieur commit luy même vne injustice, ou qu'on le prétende, vn Souverain étranger dont les Sujets ont navigué à l'ombre de sa puissance et Sous sa protection, doit jl les abandonner à la direction d'une autre Nation.

Tout le monde sera d'accord avec les Magistrats Anglois que, les Cours d'Amirauté ou autres doivent juger selon le droit des gens et les Traités p. 12. Mais qui doit juger si elles si conforment ou si elles s'en écartent? Car jl n'est pas moins vray que ces memes Magistrats en conviennent, que Si par le droit des gens et les Traités il ne paroît point qu'jl y ait eu juste lieu à condamner, soit comme effets ennemis, soit comme contrebande, jl faut que la décharge s'en suive. *ibid.* Et ce principe est aussy vray pour le second degré de Jurisdiction comme pour le premier.

Ce cas s'offre trop sensiblement de luy même pour avoir été omis par Heineccius. Jl s'en fait l'objection à la Section 22^e. qui n'a pas été citée dans le raport des Magistrats Anglois.

Mais si par le jugem^t. rendu, dit ce Jurisconsulte, le Navire est confisqué pour raison de Marchandises prohibées, et que la nation à qui il est enlevé, se plaigne qu'on luy fasse injustice, ne reste-t-il donc aucun remède? La prudence ne veut pas que l'on ait dans l'instant recours à la voye des

armes. L'usage est d'envoyer des Ministres pour réclamer les prises injustes, ce qui a été pratiqué dans notre Siècle par les Anglois et les Hollandois qui réclamoient plusieurs Navires qu'ils se plaignoient avoir été injustement enlevés par les Suédois. À la vérité si l'on ne peut remédier au mal par cette voye de douceur, on a coûtume de décerner des représailles.'

Le Sentiment d'Heineccius est incontestablement conforme au droit des gens. Vne nation est encore moins soumise aux tribunaux, qu'aux loix d'une autre nation ; Elle cesseroit d'être Souveraine et indépendante.

Tout Souverain a droit de faire examiner si l'on a rendu justice à ses Sujets, lorsque ses Sujets n'ont agi que sous sa protection : Si elle n'est pas exactement rendue, il a droit de la demander, si elle est refusée, de l'exiger par les armes ; Si elle n'est que contestée, de requérir qu'il en soit décidé par des Ministres ou Commissaires revêtus des pouvoirs des deux nations, ou par un arbitre neutre et convenu. Telles sont les voyes qu'ouvre et qu'autorise le droit des gens.

L'érection et les fonctions des Cours d'Amirauté et des Tribunaux qui leur sont supérieurs ne changent rien à ces principes. Chaque nation a le droit de les établir ; Elle peut et doit le faire. C'est un égard et une attention que toute nation se doit à elle-même, que de s'éclaircir sur la légitimité des prises faites en vertu de commissions émanées de son autorité ; C'est une nécessité de les faire juger, soit, comme on l'a dit, pour rendre un jugement provisoire, contenir les armateurs, et réprimer les pirateries, soit pour décider les contestations qui s'élèvent fréquemment entre les armateurs d'une même nation, soit pour avoir des renseignements en cas de recours de la part des nations étrangères qui se trouveroient lésées, et se trouver d'autant plus en état de leur procurer justice. Il est dans l'ordre que l'Etat prenne connoissance d'une prise dont on peut luy demander la restitution, et qui a été faite de son autorité.

Mais toutes ces considérations n'excluent point le droit du Souverain de la partie saisie, et n'y peuvent donner atteinte. Tout ce qui a été fait par des tribunaux étrangers, luy est étranger. Il n'est lié et ne peut l'être que par ce qui est fait en vertu de ses ordres et de ses pouvoirs ; et il ne peut y avoir de juges à la décision desquels il soit tenu de déférer, que des commissaires respectifs ou un arbitre convenu.

Ce que l'on vient d'exposer doit fixer le sens d'un passage remarquable du rapport fait au Roy d'Ang^{re}. Apres avoir parlé de la méthode de juger et d'adjuger les captures en première instance par les Cours d'Amirauté et sur l'appel par un tribunal Supérieur de révision, il est dit p. 16 que toutes les Puissances neutres y ont acquiescé.

Si l'on entend par là purement et simplement que c'est vne police intérieure, stipulée néanmoins par plusieurs traités, mais plutôt comme vne faculté que comme vne Servitude ; que l'autorité de ces jugemens ne lie pas la Puissance qui réclame et qui prétend qu'on s'est écarté dans les jugemens rendus, ou du droit des gens ou des traités, en sorte qu'il n'en résulte ni retardement ni exclusion pour à la première réquisition d'une des parties en déférer le jugement à des Commissaires ; on convient qu'avec toutes ces restrictions, *c'est vne méthode à laquelle toutes les Puissances neutres ont acquiescé.*

Mais si l'on entend que l'on est strictement obligé de subir le second degré de juridiction, car le premier jugement est rendu immédiatement à l'arrivée de la prise, sur la simple requête du Capteur et presque toujours sans aucune communication à la partie saisie ; Si l'on entend que toutes les Puissances neutres ont acquiescé à la juridiction de tribunaux étrangers, parceque ces tribunaux sont tenus de prononcer selon le droit des gens et les traités, qu'il suffit, comme il est dit à la page 18, *qu'ils jugent selon leurs consciences, quand même leur sentence seroit de fait erronée, parcequ'il ne se peut que différens esprits ne pensent et ne jugent différemment sur des cas douteux ;* Et qu'en conséquence on prétende assimiler ses sujets et ceux des autres Puissances comme devant Subir les mêmes loix et la même juridiction. On ne croit pas qu'il y ait vne seule Puissance neutre qui ait acquiescé à vn pareil système ; Et il est certain qu'il y en a qui n'ont pas sacrifié à la Grande Bretagne, et qui ne luy sacrifieront jamais les droits de leur indépendance.

Il est si peu possible de se Soustraire à la force et à l'évidence de ces principes, que les Magistrats Anglois en conviennent eux mêmes, quoique ces principes soient inaliabes [*sic*] avec leur système, et qu'ils en entraînent la destruction ; Voici en effet comme ils s'expriment p. 26.

' Tout Souverain étranger avec qui on est en amitié a droit de demander que justice se fasse à ses Sujets, conformément au droit des gens ou aux traités particuliers, s'il en est de faits avec luy, qui subsistent ; Et lorsqu'en des cas qui ne sont susceptibles d'aucun doute, ces tribunaux procèdent d'une manière diamétralement opposée au droit des gens ou aux traités en vigueur, le Souverain neutre est très fondé à s'en plaindre.'

C'est avouer que les étrangers ne sont point tenus d'y déférer ; Mais il resteroit encore à décider qui détermineroit si le cas est douteux ou non ? Si la contravention au droit des gens est diamétrale ou ne l'est pas ? Toutes ces questions ne sont d'aucune juridiction particulière, et ne peuvent

être décidées que par les voyes qui ont lieu de Souverain à Souverain. Toutes les restrictions que les Magistrats Anglois ont voulu mettre à ces principes, ne peuvent ni les anéantir ni les affoiblir, ni les changer. Les articles suivans répandront encore vn plus grand jour sur cette matière.

Article 2^o.

Examen des Traités.

Les Magistrats Anglois ont cité dans le raport à Sa Majesté Britannique vn grand nombre de traités que l'on doit regarder comme les plus importans et les plus décisifs sur cette même matière. On se renfermera ici dans l'examen de ces mêmes traités.

On a vu dans l'article précédent que l'vsage étoit de faire procéder sans délai au jugement d'une prise par les cours des causes maritimes, et que cet vsage ne donnoit aucune atteinte aux droits qu'ont les Souverains étrangers de réclamer contre la condamnation des prises faites injustement. Au contraire c'est vne première instruction qui constate la prise, qui fait connoître le capteur, qui fournit plusieurs renseignemens sur les circonstances, et qui facilite les recours et les réclamations.

On en peut conclure qu'il est de l'intérêt des Puissances, ainsi que du bon ordre intérieur et civil, que les Capteurs ne puissent disposer de leurs prises, sans qu'il soit auparavant intervenu vn jugement, et que ce jugement soit revû par vn tribunal supérieur, afin qu'une nation se faisant justice à elle même, on soit au moins plus rarement dans le cas de former des réclamations.

Il résulte de cette observation qu'il a été de l'intérêt des Puissances de le stipuler par des traités entre elles. Il y a en effet parmi ceux qui sont cités dans le raport fait au Roy d'Angleterre plusieurs de ces traités où il est dit que les prises seront jugées par des Cours d'Amirauté avec appel à vne Cour Superieure; Mais pour que ce jugement fût regardé autrement que comme provisoire, et qu'il fût définitif, il faudroit qu'il y eût des engagemens d'y acquiescer, sans réclamer, et qu'en conséquence les Puissances contractantes eussent renoncé au droit d'en déférer l'examen à des commissaires, et d'vsar de représailles dans le cas où elles auroient à se plaindre de l'injustice des jugemens.

C'est ce que ne porte aucun de ces traités. On ne se rapelle pas que l'on y trouve en aucun [en-]droit le mot de jugement *Souverain et en dernier ressort*. Il ne suffit pas qu'un traité porte que les Capteurs ne pourront disposer de leurs prises qu'après avoir essuyé vn ou deux degrés de jurisdiction; Ces

stipulations n'étant point contraires au droit des gens, n'emportent aucune dérogation à ses dispositions. Si vn Souverain a droit, comme on n'en peut douter, de prendre fait et cause pour vn de ses sujets dont le navire n'aura pû être protégé par le pavillon, qui est la marque de la protection du Prince ; Si vn sujet en pareil cas a luy-même le droit de réclamer la protection de son Souverain, il faudroit qu'un Etat eût renoncé bien expressément et bien formellement aux droits qui sont vne suite de son indépendance, pour être obligé d'acquiescer aux décisions d'un tribunal étranger.

Le traité de La Haye du 17 Février 1668, et celui de Londres du 1^{er} Décembre 1674 entre l'Angleterre et la Hollande sont de ceux qui portent que les prises seront jugées par les Cours d'Amirauté, avec faculté d'appel à vn Conseil Supérieur, si les Ministres forment quelques plaintes sur l'injustice du premier jugement ; Mais ces traités ne renferment aucune clause dérogatoire aux droits naturels des Souverains, et par conséquent ces droits restent en leur entier. On ne parlera pas du traité de Westminster entre les mêmes Puissances du 6 Février 1715-6. parcequ'il ne fait que confirmer les traités antécédens, et expliquer vn article de celui de 1674.

Il est vrai que les Magistrats Anglois ont avancé p. 30 que par les traités entre l'Angleterre et la Hollande *il est expressément enjoint à tout Sujet Hollandois de ne recourir en dernier ressort qu'à la Cour d'appel de Sa Majesté Britannique.*

On peut lire ces traités et l'on sera convaincu que ce qui est avancé par les Magistrats Anglois est vne faute d'inattention qui échape facilement, lorsque l'on est préoccupé d'un système.

Les traités entre ces deux nations ne portent point le mot de *dernier ressort*, mais simplement ceux de Cour Supérieure, vltérieure et de révision.

Ils portent aussi peu *qu'il n'y aura que ce recours.* Ils stipulent que les prises seront jugées par les Cours d'Amirauté, que sur les plaintes des Ministres, il y aura apel à une cour de révision ; C'est vne voye qu'ils ouvrent pour obtenir justice ; Mais ils ne ferment ni ne proscrivent celle qui est ouverte par le droit des gens, et qui est de recourir au Souverain et de demander vn examen par des Commissaires respectifs. Il faudroit qu'il y eût vne dérogation expresse et formelle, comme elle s'y trouveroit si au lieu de s'exprimer comme fait le traité *qu'on aura recours à la voye d'appel*, il s'étoit exprimé comme le font les Magistrats Anglois *qu'il n'y aura de recours qu'à la voye d'appel.* Il ne faut pas beaucoup de logique pour sentir la différence de ces expressions.

Il en est du traité de St. Germain du 24 Février 1677 entre la France et l'Angleterre comme de ceux dont on vient de

parler. Mais les autres en plus grand nombre cités par les Magistrats Anglois, renferment tous, quelques articles ou quelques clauses qui, loin de confirmer leur système, établissent au contraire que les contestations sur les prises ne sont point de simples affaires de particulier à particulier ; Car l'on convient que celles de cette nature doivent être portées devant les tribunaux du pays ; mais que ce sont des affaires de nation à nation où les Ministres publics interviennent, et où ils traitent entre eux sous l'autorité de leurs maîtres et en vertu de leurs pouvoirs. Ces traités sont autant de preuves que les Souverains ont le droit de requérir que la discussion des prises soit remise à des commissaires respectifs ; Qu'enfin chaque Souverain se réserve le droit de faire rendre justice à ses Sujets ou d'vser de représailles.

Pour ne laisser rien d'obscur ni de douteux sur cette matière, on examinera sommairement ces traités par ordre de dates.

Traité de St. Germain du 29 Mars 1632, entre la France et l'Angleterre.

Par ce traité les Ministres de France promettent au nom du Roy leur maître de faire payer à l'Ambassadeur d'Angleterre diverses sommes énoncées par les articles 1 et 2. pour les navires le Jacques, la Bénédiction &^{ca.}, et il est pareillem^t stipulé au nom du Roy d'Angleterre par l'article II. de payer à qui par le Roy de France sera ordonné les sommes y énoncées pour les Navires le Gabriel, la S^{te} Anne &^{ca.}

Ces articles prouvent évidemment que dans le cas de prises injustes la restitution est déterminée non par l'autorité d'aucune Cour de Judicature des deux nations, mais par celle des deux nations mêmes confiée a leurs Ministres respectifs. On peut remarquer que les deux Rois en font leur affaire personnelle, puis que c'est en leur nom que les payemens sont promis.

Traité de Westminster du 3 Novembre 1655 entre la France et l'Angleterre.

L'article 3 de ce traité porte qu'en cas de délai ou de déni de justice elle sera requise et poursuivie par l'Etat, l'Ambassadeur, ou des Ministres de celui dont les Sujets auront souffert le dommage.

L'article 24 stipule formellement qu'il sera nommé des Commissaires de part et d'autre pour liquider les prises, en ordonner et régler le payement, la compensation ou la satisfaction, et que dans le cas ou les Commissaires ne seroient pas d'accord entre eux les différens indécis seront remis à l'arbitrage de la République de Hambourg.

Ces dispositions sont bien contraires au système Anglois pour interdire la décision des prises à toute autre nation qu'à celle des capteurs. On peut dire que ce traité indique les

voyes que les Princes doivent prendre pour terminer les contestations sur les prises et éviter de se mettre dans la nécessité de décerner des représailles.

Traité de Madrid du 23 May 1667 entre l'Espagne et l'Angleterre.

Ce traité porte à la vérité que les prises seront jugées par les Amirautes ou par des compétens ; Mais par l'article 3 il est stipulé qu'en cas de délai ou de déni de justice les Rois se la demanderont réciproquement, et qu'il y aura des Commissaires respectifs pour entendre et recevoir les demandes, afin que tous les différens puissent être accommodés à l'amiable.

Ce traité ne prouve donc point qu'on s'en remette définitivement aux jugemens prononcés par les tribunaux de la nation qui a fait la prise. Il prouve au contraire qu'en cas de contestation c'est vne affaire à traiter de Couronne à Couronne et à terminer à l'amiable.

Traité de Westminster du 29 Nov^{bre} 1669.¹ entre l'Angleterre et le Dannemarck.

Quoique ce traité soit vn des plus circonstanciés sur ce qui sera observé dans les jugemens par les Cours d'Amirauté et par les Cours Supérieures qui connoîtront de l'appel, l'article 35 porte expressément que si l'une des deux parties, étrangère au pays où s'agite la contestation, préfère d'être jugée par des commissaires, les deux Rois en nommeront dès qu'ils en seront requis à l'effet d'examiner toutes ces sortes d'affaires.

Traité de Wittehall du 29 Avril 1689, entre l'Angleterre et la Hollande.

On ne voit pas pourquoi les Magistrats Anglois ont cité ce traité dans leur raport.

¹ The correct date of this Treaty is 11 July 1670 (Record Office). The text of Art. 35 is as follows :

' Utque amborum Regum Subditorum securitati eò uberius prospiciatur adhibeaturque cautio, ne ulla ipsis violentia à prædictis Navibus bellicis inferatur, omnibus Ser^m Magnæ Britanniæ etc. Regis Navium bellicarum Præfectis et aliis quibus cunque ejus subditis severè injungetur et mandabitur, ne molestiâ aut detrimento ullo subditos Ser^m Regis Daniæ et Norvegiæ etc. afficiant, Secus si fecerint in personis et bonis omnibus tenebuntur, donec de detrimentis ab ipsis illatis et incommodis omnibus exinde perceptis et percipiendis debita ac justa fuerit consecuta satisfactio et compensatio, similiter omnibus Ser^m Regis Daniæ et Norvegiæ etc. Navium bellicarum Præfectis et aliis quibus cunque Ejus Subditis severè sub iisdem pœnis injungetur et mandabitur, ne molestia aut detrimento ullo dictos Regis Magnæ Britanniæ etc. subditos afficiant, Proviso tamen quod omnes prædictæ actiones justo et legitimo processu in Curia Admiralitatis utriusque Regis examinari et judicari debeant ; sive si partium alterutri qui extraneus fuerit, in isto loco ubi controversia erit peragenda, potius visum fuerit, coram certis quibusdam Commissariis, quos uterque Rex statim atque implorati fuerint, hunc in finem constituent, examinabuntur, ita ut processus hac ratione non solum absque plurimis sumptibus pertractari, sed etiam ad summum intra tres Menses finiri possit.'

La France étoit alors en guerre contre l'Angleterre et la Hollande. Le traité dont il s'agit n'est qu'une convention entre ces deux Puissances alliées pour venir leurs forces maritimes et concerter leurs armemens. Elles stipulent que les prises faites sur leur ennemi seront au profit des deux nations ; Qu'elles seront jugées par la Cour de l'Amirauté de celle des deux nations dont le Navire aura fait la prise ; Que dans le cas où la prise sera faite par les navires des deux nations joints ensemble, elle sera jugée par la cour de l'Amirauté de la Nation dont les vaisseaux auront été les plus forts en nombre de canons. Toutes ces stipulations sur le jugemens et le partage des prises faites sur l'ennemi n'ont aucun rapport à la question dont il s'agit. Ni la Hollande ni l'Angleterre qui sont les deux seules Parties contractantes, ne soumettent les prises qui seroient faites sur leurs sujets au jugement définitif des tribunaux de l'une ou l'autre nation. On croiroit superflû de s'étendre davantage sur ce traité.

Traité de Commerce de Riswick du 20 Sept^{bre}. 1697 entre la France et la Hollande.

Par l'article 4 de ce traité il est déclaré qu'il sera accordé des lettres de représailles en cas de dény manifeste de justice. On y stipule qu'avant de les accorder la requête de celui qui les demandera sera communiquée au Ministre qui se trouvera sur les lieux de la part de l'Etat contre les Sujets duquel elles seroient données, afin, porte le traité, qu'il puisse procurer l'accomplissement de la justice qui est due.

Le traité ne dit pas afin qu'il puisse procurer un jugement, mais la justice qui est due ; Par conséquent les Parties contractantes se réservent d'en connoître, conformément aux dispositions générales et communes du droit des gens sur cette matière.

Traité de commerce d'Vtrecht du 11 Avril 1713 entre la France et l'Angleterre.

L'article 3 du traité de commerce d'Vtrecht contient sur les représailles les mêmes dispositions que l'article 4 du traité de Ryswick dont on vient de parler. Il autorise les lettres de représailles dans les cas de délay ou de déni de justice, après la communication de la requête par laquelle on en formera la demande, afin que *l'on puisse procurer la juste satisfaction qui sera due.*

Ces dispositions sont confirmées par l'article 16 du traité de paix d'Vtrecht avec l'Angleterre qui est de même datte que celui de commerce ; On y prévoit et on y admet le cas des représailles, lorsque la partie lésée n'aura pas été satisfaite.

Loin que ces stipulations ayent pu exclure la voye des Commissaires, l'article 11 du même traité de paix avoit pourvû à ce qu'il en seroit nommé à la requisition de l'une ou de

l'autre des parties pour prendre connoissance des prises faites durant la paix.

Telle est la loy actuelle entre la France et l'Angleterre, puisque par le dernier traité de paix d'Aix la Chapelle le traité d'Vtrecht y est confirmé par l'article 3 *comme s'il y étoit inseré mot à mot*, ce qui emporte l'obligation de nommer des Commissaires à la première requisition d'une des deux parties pour juger des prises faites avant la guerre, ainsi qu'il est porté par l'article 11 du traité d'Vtrecht.

Le traité d'Aix-la-Chapelle avoit été précédé d'une déclaration du 8 Juillet 1748 entre les Ministres de France, d'Angleterre et de Hollande, où l'on est expressément convenu de référer à des Commissaires le jugement des prises faites depuis la cessation des hostilités.

Tous ces exemples font connoître que jamais aucune nation n'a prétendu s'assujettir à une juridiction étrangère pour le jugement définitif des prises ; et que tout ce qui se trouve dans les traités sur les jugemens qui seront rendus, tant par les Amirautés, que par les Cours Supérieures ne peut s'entendre que de jugemens provisoires qui ne dérogent point à l'indépendance mutuelle des Puissances de l'Europe, à la protection que les Princes doivent à leurs Sujets, et au droit qu'ils ont de demander et d'exiger une juste réparation et satisfaction lorsqu'on a donné atteinte à la Sauvegarde qu'imprime la protection des Souverains aux effets et aux navires de leurs Sujets suivant tous les principes du droit des gens.

Article 3^e.

Examen des raisons alléguées dans le raport fait au Roy d'Angleterre.

Il est nécessaire de rapeller quatre paragraphes du raport fait à Sa Majesté Britannique où les Magistrats Anglois ont prétendu établir que les étrangers doivent reconnoître l'autorité des tribunaux de leur nation en matière de prises.

1. ' S'il arrive, disent-ils p. 17, qu'un Sujet Prussien ait une plainte ou une demande à former contre quelqu'un qui est domicilié ici, il doit s'adresser aux tribunaux de Votre Majesté, qui tous sont également ouverts aux étrangers comme aux nationaux, de même qu'un Sujet de Votre Majesté, si tort luy est fait par quelqu'un qui ait son domicile dans les Etats Prussiens, doit s'adresser aux tribunaux de Sa Majesté Prussienne.

2. ' Si le grief regarde une capture sur mer en tems de guerre, ou que le différens soit relatif à une capture, il faut s'adresser aux tribunaux établis pour juger ces causes.

3. ' Le droit des gens fondé sur la justice, sur l'équité, sur la

raison, et la convenance des choses, et consacré par vn long vsage, ne permet des représailles que dans les deux cas seuls, ou d'*vn tort violent, dirigé, et soutenu par vn Souverain*, ou d'*vn absolu déni de justice de la part de tous les tribunaux et du Souverain même*, et cela en choses qui n'admettent pas le *moindre doute ou litige*.

4. ' Mais où la liberté entière est laissée aux juges de prononcer selon leurs *consciences*, quand même vne *sentence* qu'ils rendent seroit de *fait erronée*, elle ne donneroit cependant nul lieu à des représailles. JI ne se peut guères que différens esprits ne pensent et ne jugent différemment sur des cas douteux ; Et dans ces cas tout ce que l'ami étranger peut demander raisonnablement, est que justice luy soit rendue aussi *impartialement* qu'aux gens du pays où sa cause se plaide.'

Pour juger du mérite de ces raisonnemens il faut distinguer deux natures d'affaires.

Les vnes qui sont de particulier à particulier qui doivent se décider par les loix ainsi que par les tribunaux du pays. C'est le cas de tout particulier qui fait des affaires dans vn pays étranger ; JI sait en les entreprenant que s'il survient des discussions il doit réclamer la protection des loix et des Magistrats.

Jl est d'autres affaires au contraire qui doivent être considérées comme affaires de nation à nation ; Ce sont celles que des Sujets entreprennent sous la protection de leurs propres Souverains. Où cette protection n'a pû les garantir d'une violence étrangère faite de l'autorité et en vertu de la commission d'un Souverain étranger, l'injure faite au particulier regarde alors l'Etat dont il est Membre. C'est vne affaire de nation à nation, qui n'est soumise à aucun tribunal civil, qui ne peut se juger par les loix civiles d'aucune nation ; Elle est dès lors de nature à ne pouvoir se concilier que de gré à gré, et elle ne peut se traiter que suivant les principes de l'équité naturelle et du droit des gens.

Telles sont évidemment les prises faites sur mer.

Le droit des gens suivant même les Magistrats Anglois p. 24. *est la seule règle à suivre dans les décisions de cette nature* : Et dès que le droit des gens en est la seule règle des tribunaux particuliers à vne nation n'en peuvent décider, parceque l'autorité qui les constitue ne peut leur donner de juridiction sur les autres nations, en sorte qu'ils sont incompetens en conséquence même des principes qui devroient déterminer leurs jugemens ; et que ce seroit donner la plus violente atteinte à ces principes que de pretendre seulement faire reconnoître leur juridiction.

Cette distinction entre les affaires de particulier à parti-

culier et de nation à nation ne peut se contester ; et dès qu'elle est admise, la première réflexion qui se présente à la lecture des paragraphes qu'on a raportés cy dessus des Magistrats Anglois, c'est qu'on ne peut conclure de ce qui s'observe dans les affaires de particulier à particulier, pour ce qui doit s'observer à l'égard des prises faites en mer, qui doivent être considérées comme affaires de nation à nation.

C'est là cependant le vice évident et manifeste du raisonnement que l'on vient de rapporter.

Les Magistrats Anglois établissent dans le premier paragraphe cité, que si *vn Sujet Prussien* a vne demande à former contre *quelqu'un* domicilié en Angleterre, il doit s'adresser aux tribunaux Anglois ; Et après avoir établi cette règle générale qui s'observe pour les affaires de particulier à particulier ils l'appliquent dans le second paragraphe aux affaires de nation à nation, en disant que si *le grief regarde vne capture faite sur mer, il faut s'adresser aux tribunaux établis pour ces causes.*

Les réflexions vltérieures renfermées dans les paragraphes 3 et 4 portent indistinctem^t sur ce qui est établi par le 1^{er} et le 2^o quoiqu'elles n'y soient pas également applicables ; Mais c'est vne suite du vice qui affecte le principe même du raisonnement. Par exemple la voye des repréailles dont il est parlé dans le troisième paragraphe n'est communément mise en vsage que pour les affaires de nation à nation. Suivant tous les principes admis et reconnus par les Anglois même, le dény de justice les autorise ; Mais suivant eux il faut que le *dény de justice* soit *absolu*, que le *tort* soit *violent dirigé et soutenu par le Souverain, et qu'il n'y ait pas le moindre doute ou litige.*

Toutes ces épithètes et toutes ces restrictions, n'ajoutent ni ne retranchent rien à la simplicité des principes. Aucune nation ne tient dans ses mains vne mesure avouée par les autres nations pour décider de l'étendue des *torts*, du degré d'*injustice*, de l'incertitude des *doutes*, et de la probabilité des *Litiges*. Aucune nation n'est obligée de se soumettre au jugement qu'une autre en peut porter ; et tout rapelle continuellement à la nécessité de traiter de gré à gré par des Commissaires, ou de convenir d'un arbitre, au jugement duquel l'on promette respectivement de s'en rapporter.

Enfin toutes les règles dont il est fait mention dans le quatrième et dernier paragraphe cité, sur la conscience des juges, sur l'erreur des jugemens, et sur leur impartialité, n'ont leur application qu'aux discussions particulier et civiles, mais elles ne peuvent avoir lieu pour les contestations de nation à nation.

Un Souverain ne peut être obligé de faire dépendre la

propriété des biens de ses Sujets d'une conscience étrangère que Dieu seul peut approfondir et connoître. Il ne peut s'en rapporter à des juges étrangers auxquels il n'a aucun droit de demander les motifs et les raisons de leurs jugemens, et qu'il ne peut réprimer par la voye de son autorité, s'ils s'écartent des règles de la justice.

La réclamation contre un *jugement erroné* ne cède qu'à l'autorité du dernier ressort, et ce principe n'a évidemment lieu que dans les discussions civiles ou de particulier à particulier ; Mais suivant les principes de l'équité naturelle et du droit des gens, seules règles à suivre dans la matière des prises, *une Sentence de fait erronée*, pour être une Sentence n'en est pas moins en soi une erreur et une injustice. Toute injustice exige une réparation, et personne ne la subit que celui qui n'a pas le droit et le pouvoir de s'en défendre.

Enfin l'impartialité des Jugemens est précisément un des faits contestés. C'est la matière même du Grief et comment peut on s'en faire un moyen lorsqu'on prétend se rendre juge dans sa propre cause. Un amy étranger comme s'exprime le rapport fait au Roy d'Ang^e., lorsque c'est un particulier, se soumet par nécessité, ou si l'on veut par obeissance volontaire à un jugement, qui sans estre au fonds juste et impartial, est inattaquable par les formes ; Ainsy le veulent et l'ordonnent les Loix civiles qui ont lieu dans les affaires de particulier à particulier ; Mais un amy étranger, lorsque c'est un Souverain, ou qu'il s'agit d'affaires de Nation à Nation, ce qui est équivalent, ne reconnoît d'impartialité que celle qu'il juge luy-même estre telle ; Il n'admet d'autorité que celle de la justice et de l'équité naturelles, et personne n'en est le juge que luy-même, à moins qu'il n'en ait déferé le jugement à un arbitre convenu. Former des pretentions contraires, ce Seroit vouloir s'arroger une jurisdiction sur ceux qui ne reconnoissent aucune autorité supérieure à la leur.

Le principe de l'indépendance ne permet pas qu'on puisse adhérer à ce qui est avancé par les Magistrats Anglois p. 24. *Que tout demandeur a dû savoir que le droit des gens luy interdisoit le recours à son propre Souverain, jusques à tant qu'une injustice manifestement avérée, luy fût faite en dernier resort, et qu'il n'y restât plus aucun remède icy et aucun d'eux n'a pu ignorer que cette règle du droit des gens devoit estre d'autant plus étroitement observée par rapport aux prises de la dernière guerre, que toute la propriété en étant donnée à ceux qui les faisoient, aucune partie n'en pouvoit estre répétée sur eux, qu'en justice réglée.*

Il n'y a rien de plus vray que dans les affaires particulières on ne peut recourir à son Souverain, qu'après avoir épuisé tous les degrés de jurisdiction, et rarement les Souverains en

prennent connoissance par plusieurs raisons qu'il est inutile de discuter icy ; Mais dans les affaires de Nation à Nation, tout Sujet a droit de s'adresser directement à Son Souverain et c'est peutestre la première fois qu'il ait été avancé que le droit des gens luy interdisoit ce recours.

Les traités ont pû ouvrir et ont ouvert vne nouvelle route pour obtenir justice, ainsy qu'on l'a observé, en indiquant la voye des Cours d'Amirauté, établies dans les pays Maritimes, pour la police intérieure de l'Etat ; Mais ouvrir cette route, l'indiquer, l'autoriser, n'est point interdire, à moins d'une dérogation expresse au droit des gens, celle que ce même droit autorise, et en vertu de laquelle le Souverain dont la protection n'a pu garantir ses Sujets d'une violence étrangère, écoute et reçoit leurs plaintes et en demande directement réparation.

Si des Magistrats aussy intègres, et aussy éclairés que ceux qui ont été consultés par sa M^{te}. Britannique ont pu se tromper sur vn principe aussy évident du droit des gens, on doit reconnoître combien il seroit dangereux de laisser à la discretion de Tribunaux étrangers où l'on ne pourroit se flatter de trouver ni tant de lumières ni tant de connoissances, à decider quels sont ou ne sont point les principes du droit des gens, et d'en faire en suite l'aplication, ainsy qu'ils aviseroient bon être dans des affaires où leurs compatriotes sont intéressés.

Ce danger est d'autant plus grand qu'après avoir établi en plusieurs endroits et de la manière la plus forte, qu'on ne doit consulter que le droit des gens et les Traités, on prétend cependant étayer la méthode de juger les prises par les dispositions particulières que l'Ang^e. a jugé à propos de faire pour la répartition de ces mêmes prises, et l'on veut que ces dispositions y influent, et qu'on y ait égard. On prétend que les Etrangers doivent former leurs demandes contre des particuliers, parce que l'Etat a distribué la Valeur des prises à ces particuliers, et qu'en conséquence la répétition ne peut s'en faire qu'en justice réglée.

Ce que la G^{de}. Bret^e. ordonne dans son Etat et de son Autorité ne peut ni obliger les Etrangers ni rien ajouter aux dispositions du droit des gens, et à celle des Traités, ni en rien retrancher.

D'ailleurs les inconvéniens du Sentiment des Magistrats Anglois sont sensibles dans l'espèce présente. Sa M^{te} Britannique a jugé à propos par vn effet de sa liberalité d'abandonner aux officiers et aux Equipages des navires de guerre, les prises qu'ils feroient. Si dans le cas d'une prise injuste, les Sujets du Roy étoient obligés conformément au Sentiment des Magistrats Anglois, de la répéter contre ceux à qui la propriété en a été donnée, Il faudroit qu'ils missent en cause tout l'Equipage des navires, officiers et matelots

soit solvables, soit insolvables. Il suffit d'exposer le fait pour faire sentir la difficulté, on pourroit dire l'impossibilité d'obtenir justice par vne pareille méthode, et combien elle est contraire à tous les principes du droit des gens.

L'exemple qu'on vient de citer n'est point le seul qui puisse faire connoître le danger d'abandonner à des Cours Etrangères l'exécution, tant des Traités que des dispositions du droit des gens.

La déclaration de guerre de l'Ang^e. contre l'Espagne du 19. 8^{bre} 1739. contient vne contravention manifeste aux Traités que l'Ang^e. avoit avec la France et la Hollande.

Elle porte que tous Navires portants des Marchandises de contrebande à l'ennemy, seront de bonne prise.

Les Juges des Cours Angloises, étant soumis à l'autorité du Gouvernement de leur Nation, ont dû naturellement se conformer à vne déclaration publique de guerre, à moins que d'avoir eu des ordres particuliers de ce même gouvernement pour n'y avoir point égard.

Cependant les Traités de l'Ang^e. avec la France et la Hollande, portent qu'il n'y aura que les Marchandises de contrebande qui seront de bonne prise ; Que le Navire et les autres effets seront libres, et nullement Sujets à confiscation.

On ne doute pas que S. M. B. s'il y a des prises faites sur les François avant la guerre, en exécution de cette clause de la déclaration de guerre contre l'Espagne ne convienne d'en faire la restitution ; Cette déclaration n'ayant jamais pu donner atteinte aux Traités qui étoient entre les deux nations, encore qu'elle ait pu servir de règle aux jugemens des Cours Angloises.

L'Ang^e. doit cette réparation au droit des gens si manifestement violé par cette déclaration de guerre ; et rien ne prouve plus, comme on l'a déjà observé, le danger de s'en rapporter à des Juges particuliers, que l'exemple d'une contravention si palpable dans vn acte aussy public, aussy autentique et aussy réfléchi.

CONCLUSION.

Il resulte de ce qui est exposé dans ce mémoire que la Grande Bret^e. ne peut exiger des Puissances de l'Europe de reconnoître l'autorité de ses Tribunaux, et de se Soumettre à leurs jugemens sur la légitimité des prises et sur les dépens et les dommages et intérêts qu'entraîne la restitution de celles qui ont été faites sans fondement valable.

Il doit estre établi et reconnu comme vn principe incontestable que les réclamaçons contre les Jugemens que les Cours d'Amirauté ont portés sur les prises, sont de nature

à devoir estre traités de Souverain à Souverain, et qu'on ne peut Sans déni de justice refuser d'en déferer la décision à des Commissaires ou à vn arbitre convenu.

La Grande Bretagne ayant reconnu elle même la justice de restituer les prises faites avant la guerre, on ne doute point qu'elle ne fasse enfin cesser le refus de ses Commissaires de traiter des dites prises.

Ce qui est dit pour les prises faites durant la paix doit également avoir son exécution pour celles qui ont été faites et retenües par les Anglois à l'occasion de la guerre, conformément à l'Art^e. 19. du Traité de paix d'Vtrecht qui fixe le terme de Six mois pour retirer les Vaissaux, marchandises et effets qui se trouveroient engagés dans les lieux de la domination des puissances respectives. C'est encore vne Suite des principes des Magistrats Anglois.

Comme ils sont convenus de la justice des dépens et des dommages et intérêts, on demande que les Commissaires Anglois ne fassent plus de difficulté d'en admettre la discussion pour les prises faites sans vn fondement valable, et dont la restitution a été ou sera ordonnée.

Enfin en exécution des principes qui sont également avoués et établis par la Cour Britannique, on demande la restitution des effets appartenans à des François et qui ont été Saisis sur des Navires Hollandois ou autres Navires de Nations neutres qui ont avec l'Ang^e. des Traités pareils à ceux qui sont entre Elle et la Hollande.

On espère avec vne juste confiance que les Commissaires Anglois seront suffisamment autorisés pour traiter cette question, ainsy que toutes celles qui peuvent intéresser les deux Nations relativement aux prises faites sur mer.

76. HOLDERNESSE TO ALBEMARLE

(S. P. For., France, vol. 247)

Arlington Street, Saturday Morning, 21st April, 1753.

The Duke de Mirepoix called upon me this Morning and acquainted me that he had just received a Messenger from his Court, & he read over to me, a Letter from M^r. de St. Contest, containing Directions to acquaint His Majesty's Ministers, that the King of Prussia had accepted the Mediation offered by his Court in the Dispute subsisting with the King; *Et qu'ainsi il ne s'agissoit plus que de Savoir les Voyes de Reconciliation qui seroient proposées par la Cour Briannique.* —That as He (Duke de Mirepoix) hoped this news would be agreeable to the King, he had determined to lose no time

in informing me.—That he look'd upon this Affair which might have been liable to disagreeable Consequences as being now entirely at an End.

77. ALBEMARLE TO HOLDERNESSE

(S. P. For., France, vol. 247)

Paris, Wednesday, 25th April, 1753.

MY LORD,

Our Conversation was solely confined to this; and as I was going out of his Closet, (a method he seems to affect in delivering Papers,) he gave me for my own Information as he call'd it, a Memorial drawn up by their Commissaries, on the Subject of Prizes, of which he said he had sent two Copies to Mo^r. de Mirepoix, to be delivered to the Duke of Newcastle and Your Lordship, in which, he added, his Court explained themselves, on the Principles in His Majesty's Answer to the King of Prussia, which in their Paper lately communicated by their Ambassador, they had alledged could not be admitted by any Trading Nation.—And also, on what they meant in the same Paper, by the *voyes usitées et les regles établies*, for the pursuit of the Justice, they Imagined to be due to them, on account of Prizes. I make no doubt but this performance, in which there are some very new opinions on the subject treated of, is the work of Mo^r. de Silhouëtte.—The length of the Memorial, and the manner in which it was put into my hands, not permitting me then to take any other Notice of it, I read it very attentively at my return from Versailles, but I shall not presume to offer my thoughts upon it, farther than that the Prussian Maxims and Doctrine being adopted in it, some Conjectures may be made, of the Efficacy the Interposition of this Court is likely to have, with that of Berlin, for accommodating the Dispute with the King of Prussia on Account of Prizes, who sees his own Principles supported.—But as His Majesty has thought proper, that that Affair should rest for the present, in order to see what part the King of Prussia will ultimately take upon it; I did not make any mention of it to Mo^r. de St. Contest at this Meeting.

ALBEMARLE.

[Endorsed] Paris. April 25th 1753. E. of Albemarle. R.
April 29th Pal—Negⁿ.

78. HOLDERNESSE TO ALBEMARLE

(S. P. For., France, vol. 247)

Whitehall, 26th April 1753.

H. E. The Earl of Albemarle.

MY LORD,

I have received the Honor of Your Excellency's Letters of the 18th Instant, & laid them immediately before The King; And am particularly commanded by His Majesty, to acquaint Your Excellency with The King's entire Approbation of the Manner, in which You had executed His Majesty's Commands.

The Day before Your Letters arrived, The Duc de Mirepoix came to me, & read over a short Dispatch, He had just received from His Court, upon the Subject of the Dispute with The King of Prussia; The Substance of which You will find in the inclosed Paper, which I took down in writing, immediately after the French Ambassador's Departure.— I did not think Myself warranted to give any Answer to the Duc de Mirepoix at that Time, and having since laid before His Majesty, an Account of what Mons^r. de Mirepoix had said to me, I have received The King's Commands, to delay saying any thing farther, 'till the King can receive the Opinion & Advice of Those of His Servants, who are usually consulted upon Foreign Affairs, some of whom are now out of Town, during the Recess of Parliament, for these Holidays.— Whenever I can receive The King's Pleasure upon this Point, I shall not fail to transmit It to Your Excellency; In the mean Time, if any Discourse should pass, between the French Ministers & Yourself, You will acquaint Them, that You have received no Instructions from hence, as yet, but You may throw out as from Yourself, that You suppose the Immediate Discharge of what is due upon the Silesia Loan from The King of Prussia, to British Subjects, is what The King will insist upon, That You do not see, that there is any Room for Negotiation of any Kind, 'till that Reparation is made, for the national Insult, which has been threatened. It is in this Light that I shall state the Case to Mons^r. de Mirepoix, untill I shall have an Opportunity of receiving His Majesty's ulterior Commands. A slight Indisposition prevented that Minister from coming to me as usual Yesterday Morning.

I am, &c^a.,

HOLDERNESSE.

79. HOLDERNESSE TO ALBEMARLE

*(S. P. For., France, vol. 247)*Whitehall, 3^d May, 1753.

H. E. The Earl of Albemarle.

MY LORD,

I am to acknowledge the Honor of Your Excellency's Letters of the 25th & 28th of April, which I have had the Honor to lay before The King, & have the Satisfaction to be able to acquaint Your Excellency, that His Majesty continues to approve the Manner in which You have executed the Orders transmitted to You.

I had the Honor to inform You on Thursday¹ last, with what had passed between Mons^r. de Mirepoix, and Myself, concerning the Dispute with The King of Prussia; And that The King had thought proper, to suspend any farther Instructions, untill He should be able to receive the joint Advice of those of His Servants, whom His Majesty is pleased to consult upon Foreign Affairs. In Obedience to The King's Commands, those Lords met on Monday² last, & determined, that the proper Return to the Communication, made by the French Ambassador, of The King of Prussia's Acceptance of the Interposition, and good Offices of the Court of France (of which I sent Your Excellency a Minute in mine of the 26th past) would be, by an Instruction to Your Excellency to be communicated in like Manner to Mons^r. de St. Contest; And in order to avoid Mistakes, I have put down, in the French Language, the Words, which His Majesty is pleased to permit Your Excellency to make use of, which You will please to read over to the French Minister, as an Extract of this Letter, without giving Him any Copy thereof; They are as follows.

Le Roy est fort sensible à l'Amitié, que Sa Majesté Très Chrétienne a témoignée dans cette Affaire: C'étoit dans cette Persuasion, que Sa Majesté Lui en a fait d'abord communiquer le véritable Etat, par lequel on peut voir, qu'il n'y a présentement, rien à proposer, si ce n'est, que Sa Majesté Prussienne fasse lever l'Arrêt qu'Elle a mis sur l'Argent dû, aux Sujets du Roy, sur la Silésie, et qu'Elle fasse payer d'Abord cet Argent; Lequel n'avoit aucun Rapport aux Matières contenues dans les Plaintes du Roy de Prusse, et dont le dernier Paiement, en Vertu des Traités les plus solennels, auroit dû être fait, dans le Courant de l'An 1745.; Et ce n'est que depuis ce Terme, qu'aucun des Cas qu'on allègue, est arrivé. Cela une Fois fait, S. M. Prussienne peut être assurée, que, dans toutes les Occasions, Le Roy ne

¹ 26 April.² 30 April.

manquera pas de rendre Justice sur les Plaintes, qu'Elle peut avoir à faire, selon les Voyes préscrites, connües, et usitées, dans les Cas pareils.'

It will be easy to Your Excellency from hence, to maké Monsieur de St. Contest sensible, that The King cannot think of any Manner of Negotiation, upon this Point ; That The King expects the Payment of what is due to His Subjects on Account of the Silesia Loan, as a Reparation for the violent Injustice, committed by His Prussian Majesty, on the Crown of England.—This is the previous Step which The King demands, & if it is not agreed to by the Court of Berlin, The King will think Himself authorized, by natural Justice, & the Law of Nations, to take proper Measures, to do Himself Right, and to redress the Injury done to his Subjects ; In this Light The King's Servants here have been directed to state the Case to the French Ambassador.—The Duc de Mirepoix, in a Conversation He had Yesterday with the Duke of Newcastle, endeavoured to refine upon the Nature of Reprisals, & pretended, that if His Majesty were now to seize any Ships or Effects belonging to His Prussian Majesty, or His Subjects, such a Reprisal would be an hostile Act, & put The King in the Light of Aggressor in the Breach which may ensue ;—His Grace answered that Minister, that according to the Law of Nations, no Wrong is without a Remedy, and that if this Doctrine was to take Place, the Insult committed by The King of Prussia, would be without Redress. I mention this Conversation particularly to Your Excellency, on Account of the following Part ; For Mons^r. de Mirepoix replied ; That The King might depend on obtaining Justice, from the efficacious Interposition of The King His Master. But the Duke of Newcastle, very properly acquainted Him ; That it was not consistent with the Dignity of His Majesty's Crown, to depend on the Will of any other Prince, for the Redress of Injuries to His Subjects ; That the Nature of the Application originally made to the Court of Versailles, upon the Subject of the Dispute with The King of Prussia, was, to show The Most Christian King, as a Friend to both Parties, and as a Power desirous of preserving the Peace, the Nature of the Injury committed, & the Consequences which might naturally result from It.

I thought it necessary to apprise Your Excellency with these Particulars.—In Your next Conversation with the French Ministers, You will endeavour, to show Them, that, whatever may be the Nature of The King of Prussia's complaints, His Proceedings thereupon, have been violent, & unjustifiable ; And that His Majesty is warranted by natural

Equity, & the Law of Nations, to do Himself Right ; That His Majesty does expect, that The King of Prussia, should as a previous Step, take off the Confiscation, laid upon what Remains due on the Silesia Loan ; This once done, The King will always be ready to receive the Complaint of any Foreign Power, & to do ample Justice upon It, when it shall be found reasonable.

I am, &c^a.
HOLDERNESSE.

80. ALBEMARLE TO HOLDERNESSE

(S. P. For., France, vol. 247)

Paris, Wednesday, 9th May, 1753.

MY LORD,

Your Lordship's Letter, of the 3rd Inst., gave me the greatest Satisfaction, in acquainting me with the Continuance of His Majesty's gracious Acceptance of my poor Services.—I executed, Yesterday, His Majesty's Commands, by reading to Mo^r. de St. Contest that part of Your Lordship's letter in french, (which I extracted in the very Words) designed as a return to the Communication made by the French Ambassador, of the King of Prussia's Acceptance of the Interposition and Good Offices of the Court of France.

I found Mo^r. de St. Contest had received an Account from Mons^r. de Mirepoix the same, in Substance, as that I had read to him, and after expressing his Hopes, that the Dispute between my Court and that of Berlin would soon be amicably accommodated, He asked me what was mean't at the End of what I had read, where, talking of the King's readiness to do Justice upon the Complaints the King of Prussia might have, it is added, *selon les Voyes usitées, &c^a*.—I told him that those Methods were well known and establish'd ; that the Question was not now to enter into that Inquiry, but for His Prussian Majesty to make that Reparation for the Violent Injustice committed by Him on the Crown of England, which the King expected, by the payment of what is due to His Majesty's Subjects on Account of the Silesia Loan ; that I hoped He (Mo^r. de St. Contest) did not imagine that the King would enter into any manner of Negotiation with the King of Prussia ; as, I assured him, he would find himself disappointed if he had any such Expectation, that Payment being the previous Step which the King demanded, and if it was not agreed to, by the Court of Berlin, His Majesty would think himself authorized, by Natural Justice and the Law of Nations, to take proper Measures to do Himself Right and redress the Injury done to His Subjects.—I then

explained to him the Nature of the Application that had been originally made to the Court of Versailles, as contained in Your Lordship's Letter ; and added, that whatever might be the Nature of the King of Prussia's Complaints, His Proceeding thereupon had been violent and unjustifiable. Mo^r. de St. Contest acknowledged, that the remainder of what was due on the Silesia Loan ought to have been discharged in 1745 ; but, as he thought it necessary to say something after that, to excuse their good Ally, and having no good reason to give, he ventured on a very bad one, thinking it I suppose better than none at all ; by saying, that We were then at War ; I shewed him how Idle such a pretence was, as We were certainly not at War with the King of Prussia, and that he might and ought to have paid it since. From thence he offer'd to refine upon the Nature of Reprizals, and of an *Aggression*, as he had already done with me, of which I had the honour to acquaint Your Lordship in my Letter of the 11th April ; and Mo^r. de Mirepoix's Conversation with the Duke of Newcastle on the same Subject being of the same Kind, was (no doubt) dictated to him from hence ; I would not let Mo^r. de St. Contest be ignorant of the Answers His Grace had given to it, to which He (Mo^r. de St. Contest) did not think fit to make any Reply, but turned the Conversation to the Memorial on Prizes which their Ambassador had lately given His Grace and to Your Lordship ; on which, he said, Mo^r. de Mirepoix had informed him that both the Duke of Newcastle and Your Lordship had told him, that possibly Our Two Courts might come to some Conclusion, on the plan laid down in that Memorial ; I answered in general, that not having received any Instructions on that head what I should say would only be as from myself, and have no other Weight ; but that in my Opinion, that Memorial contained many principles that could never be admitted, much less be conformed to, as being contrary to the known Maxims long established and acquiesced in, and equally repugnant to the Law of Nations, and to the Letter and Sense of Treaties now subsisting. Our Conversation ended here, without his making any mention to me of any other publick affairs.

I have the honour to be with the greatest Respect,

My Lord,

Your Lordship's

Most obedient and most
humble Servant

ALBEMARLE.

[*Endorsed*] Paris May 9th 1753. Earl of Albemarle. R
May 13th (King of Prussia).

81. ALBEMARLE TO HOLDERNESSE

*(S. P. For., France, vol. 247)*Paris, Wednesday, 16th May, 1753.

MY LORD,

After returning Your Lordship my thanks, for the honour of Your Letter of the 10th. Inst., I shall give you but very little Trouble, on publick affairs; Mo^r. de St. Contest, who came Yesterday to Paris on His Most Christian Majesty's being at Marli, having only repeated to me, the hopes, that the King His Master's Interposition with the Court of Berlin, would have the desired Success.

82. HOLDERNESSE TO KEENE

*(S. P. For., Spain, vol. 143)*Whitehall, 26th May, 1753.*Secret.*H. E. M^r Keene.

SIR,

I received, on Saturday last, the Favor of Your Letters of the 7th Instant, by Jenkins, & laid Them immediately before The King; And am particularly commanded by His Majesty, to acquaint You, with His entire Approbation, of the Manner in which You have executed His Commands, & of the clear, & distinct, Account, which You have given, of what You suppose to be, the present Views, & Intentions of the Court of Madrid, in Case the Dispute with The King of Prussia shall draw on those Consequences, which His Majesty is still willing to hope, may be avoided; And Your Opinion is supported by such weighty, & solid Arguments, that I am persuaded, You have formed a true Judgement of the Disposition of the Spanish Ministers. The King was very much pleased to find, that Their Catholick Majestys had expressed such Approbation, at the Manner in which The Earl of Albemarle has been instructed, to treat the present Dispute, with The King of Prussia, at Versailles. The Plan laid down by The King, is very clear, and lies in a very short Compass; The King of Prussia, an Ally of France, has done Us a National Insult, by refusing, on groundless Pretences, to pay the Remains of a Debt, due to private Persons, Subjects to The King; a Debt guarantied by the most solemn Treaties, and the very Condition, by which the King of Prussia is now in Possession of a valuable Consideration.

The King acquaints the Court of France with this Proceed-

ing, appeals to Them, as to the Injustice of It, & informs Them of the fatal Consequences which may arise from It, and asks Their Interposition, as a Power interested in the Preservation of the publick Tranquillity, pointing out, at the same Time, the Satisfaction, which His Majesty insists on, as a preliminary Step, on the Part of the King of Prussia.

The Court of France seem wilfully to have mistaken the Nature of the Application made to Them, & wanted, as Mediators, to have entered into the whole Dispute, & to have erected Themselves, as Judges of it, nay, have even gone farther, & support the essential Part of the Prussian Doctrine, asserting, that even where Treaties do not interpose, the Law of Nations decides, that the Goods of an Enemy, in Time of War, are protected by being on board a Neutral Bottom; And not contented with reasoning only upon this Point, they have made It a previous Condition to the Treaty of Commerce, now depending between Them & the States General, that the Dutch should obtain from Us a fresh Declaration of the Existence of the Treaty of 1674, in It's full Force & Extent, & that, in Consequence of It, They should claim all Goods, belonging to French Subjects, which may have been taken & confiscated, on board of Dutch Ships, during the whole Course of the War. And I send You inclosed, for Your Information only, (of which, however, You are to make no Use,) Copies of two Letters, from The Duke of Newcastle to Col. Yorke, upon this Subject.

This Proceeding of the Court of France, greatly extends the original Dispute with the King of Prussia, & looks, as if done on Purpose to open a new Scene of Disturbance, as they cannot but know, they attack Us on a Point, from which It is impossible We should recede; And they hope to be joined in It by all the lesser Trading States, who would wish to be their Carriers in Case of a Rupture.

This much I thought necessary for Your Information, but I should deviate from the Design of the present Letter, were I to enter farther into the Question at present; I shall therefore only acquaint You, that it is The King's Pleasure, that You should make a proper Compliment to Monsieur Carvajal, upon the Manner in which He laid before Their Catholick Majesties the friendly, & confidential, Communication, which The King had directed You to make, of the Progress of the two great Points now depending with France; The Dispute with The King of Prussia; And The Election of a King of the Romans; And I am further commanded by His Majesty, to direct You, to communicate, to the Spanish Ministers, the Substance of the inclosed Copies of the several Letters, which have been wrote to, & received from, His

Majesty's Ministers abroad, upon these Subjects; And in doing It, You may assure Mons^r. Carvajal, that His Majesty never meant, or intended, to draw the Court of Spain, to take any immediate Share against France, in the present Conjunction, as His Majesty has no Doubt, but that whenever Europe comes to be embroiled in a general War, His Catholick Majesty will act that Part, which becomes the Dignity & Independency of so great a Prince.

I am, &c.,
HOLDERNESSE.

83. HOLDERNESSE TO ALBEMARLE

(*S. P. For., France, vol. 247*)

Whitehall, 24th May, 1753.

H. E. The Earl of Albemarle.

MY LORD,

As to the Dispute with The King of Prussia, I can, at present, only inform You, that The King persists in his former Resolution of obtaining Satisfaction to His Subjects, for what remains due on the Silesia Loan, as a Step previous to all Negotiation; And as Mo^r. de St. Contest has in express Terms acquainted Your Lordship, that the Court of France had advised The King of Prussia to take this Step, We take this Fact to be so, & You will let Mo^r. de St. Contest know, that We understand it in that Light, & I can scarce doubt, but that I shall have some satisfactory Account from You, perhaps by the next Messenger.

I cannot omit taking this Opportunity, of setting Right a Mistake, into which I observe, by Your Lordship's Letter of the 9th. Inst., Mo^r. de St. Contest has fallen, in Regard to the written Paper, Mons^r. de Mirepoix delivered to The Duke of Newcastle & Myself; Mons^r. de Mirepoix must have greatly misunderstood Us both, if He has acquainted his Court, that We ever shewed the smallest Approbation of that Paper. We have both avoided entering upon the Subject, until it shall have been much more maturely weighed; But far from admitting the Principles therein laid down, The Impossibility of Our ever consenting to many of the Arguments therein made use of, appears at first Sight. I throw out thus much to Your Excellency, as a Rule for Your Conversation, in case the Subject be again mentioned to You, by Mo^r. de St. Contest.

I am, &c^a.,
HOLDERNESSE.

84. ALBEMARLE TO HOLDERNESSE

*(S. P. For., France, vol. 247)*Paris, Wednesday, 30th May, 1753.

MY LORD,

Upon the Directions Your Lordship sent me the 24th Inst., I took the Opportunity, Yesterday, of repeating to Mo^r. de St. Contest, that His Majesty persisted in His Resolution, of obtaining Satisfaction to His Subjects, for what remains on the Silesia Loan, as a Step previous to all Negotiation, and expected it soon; and of letting him know, that His Majesty understood in that light the Advice, he, (Mo^r. de St. Contest) told me, had been given by the Court of France to the King of Prussia.—That Minister acquainted me, that Mo^r. de Podewiltz had promised Mo^r. de la Touche, to give him an Answer very shortly upon the Point, but instead of entering into any Particulars with me, on the Nature of the Advice, which, the King, his Master, had given to His Prussian Majesty, he desired me to observe, that what he had hitherto said to me upon it, was not by any Order from His Most Christian Majesty, but from his own Motion, as a Civility, and a Mark of his Confidence in me, but that when the Answer they expected should be received, he did not doubt but he would be ordered immediately to communicate it to me, and that he still flatter'd himself, that it would be such, as His Majesty would have reason to be satisfied with.

From this general Discourse, I pass'd to that necessary Point, mention'd in Your Lordship's letter, of setting him right in the Mistake, into which Mo^r. de Mirepoix's Letters had led him, in relation to their Memorial on Prizes, which he had lately delivered; I explained to him, very clearly, that, that Ambassador must have greatly misunderstood both the Duke of Newcastle and Your Lordship, if he had acquainted His Court, (as Mo^r. de St. Contest had told me that he had) that either His Grace, or Your Lordship, had ever shewn the smallest Approbation of that Paper, for that, on the contrary, you had both avoided entering upon the Subject with him, and that, far from admitting the Principles therein laid down, the Impossibility of our ever consenting to many of the Arguments therein made use of appear'd at first Sight; & I desired him to recollect, that, at the time he spoke to me of it in a different light, I told him, that I had not been instructed upon it, but that, in my opinion, the Memorial contained many principles that could never be adopted, as being contrary to

the known established Maxims, and repugnant to the Letter and the Sense of Treaties.—Of this I had the honour to give Your Lordship an Account, in my Dispatch of the 9th. Instant.

Mo^r. de St^t. Contest now owned to me, that, neither the Duke of Newcastle, nor Your Lordship, did enter into any Discussion upon it, but that Mo^r. de Mirepoix's Expression was, that both His Grace and Your Lordship had agreed, that many of the Principles laid down in the Memorial of this Court *se rapprochoient des Nôtres*.—And he added, that he hoped that some Means would be found, of putting a Term to the Disputes now subsisting between Our Two Courts, and to the Obstacles that had hitherto retarded that desirable Work.

I have the honour to be, with the greatest Respect,
My Lord,

Your Lordship's
Most obedient, and most humble Servant,
ALBEMARLE.

[*Endorsed*] Paris, 30th May, 1753. H. E. the E^l. of Albemarle. R 3^d June.

85. ALBEMARLE TO HOLDERNESSE

(*S. P. For., France, vol. 247*)

Paris, Wednesday, 6th June, 1753.

MY LORD,

I hoped, after the long time that has pass'd since this Court has given their Advice to the King of Prussia, that some Answer would be received, with which I might have the honour to acquaint Your Lordship, and such as His Majesty expected it to be ;—But as yet I cannot have that Satisfaction, M. de St^t. Contest not having had any Letters from Berlin, since the last time I saw him ; All, therefore, that he said to me, Yesterday, in relation to that Matter, was, that he did not doubt, but he should soon receive some Accounts from thence of the Influence of His Most Christian Majesty's Friendly Advice ; I reminded him of the time that was elapsed, since The Most Christian King had offer'd His Interposition,—of His Majesty's Resolution not to enter into any Negotiation with His Prussian Majesty, till His Subjects had previously received that Justice they were entitled to, by the payment of what remains due to them on the Silesia Loan ; and that His Majesty would not suffer Himself to be amused nor let this Affair be protracted, as too long a Delay, in returning an Answer might be equal to

giving an unsatisfactory one ;—Mo^r. de St. Contest was very civil to me on the occasion, but could only repeat the hopes he entertained, which, he said, were next to Assurances, that the Dispute with the King of Prussia would be brought to an amicable Accommodation.

I believe Your Lordship will be equally surprized with me, at what a friend of mine, who went in after me to Mo^r. de St. Contest, told me, he had from that Minister's own Mouth, concerning this Matter, it was in Substance, that the Dispositions of my Court were not such as I represented them to be, for if he was to believe me they were exasperated to the highest Degree, and he had reason to believe the Case was not really so extreme as he imagines I only *pretend* it to be ;—As I have always conformed myself to the Tenor and Spirit of Your Lordship's Letters, and spoke to him with that becoming Firmness, which I had been directed to do, and in the manner I have acquainted Your Lordship with, in my several letters, on that Subject, I hope you will make Mo^r. de Mirepoix sensible (for I take it for granted that it is from what that Ambassador writes that Mo^r. de St. Contest speaks) that my Conduct in this respect has been governed by my Orders, which, it seems, he has given the French Minister to understand otherwise.

I have the honour to be, with the greatest respect,
My Lord,
Your Lordship's
Most obedient, and most humble Servant,
ALBEMARLE.

86. HOLDERNESSE TO ALBEMARLE

(*S. P. For., France, vol. 247*)

Whitehall, 7th June, 1753.

H. E. The Earl of Albemarle.
MY LORD,

I have nothing to add, at present, as to the Dispute with The King of Prussia ; Your Excellency is fully informed of The King's Sentiments and Resolution thereupon, which still remain the same, as I have had the Honor to represent to You in the several Letters I have been commanded by His Majesty to write upon that Subject ; And Your Excellency may well imagine, That The King begins to be surprized, that no Determination is, as yet, taken by The King of Prussia, in

consequence of the Advice given Him by the Court of Versailles.—I may in Confidence acquaint Your Excellency, that the French Ambassador at Madrid, has communicated to the Spanish Ministers, the several Steps which have been taken in regard to this Business, but in mentioning the original Application made by The King to France for their Interposition, in order to prevent the fatal Consequences of an open Rupture with the King of Prussia, the Term *Mediation* was made use of, as being what The King had desired ; But Mr. Keene having ample Instructions, & being fully informed of the real State of the Case, it will not be difficult for Him, to set It in it's true Light, & to clear up the Mistake into which the French Ministers have wilfully run from the very beginning. I know Mons^r. Masones has been talked to in that Strain, but upon the Information he had received from Your Lordship, he explained himself in the Manner I could wish to Mons^r. de St. Contest.—I cannot finish this Letter, without acquainting Your Excellency, with The King's entire Approbation of the Manner in which You have talked to the French Ministers, upon the several Heads of Business mentioned in Your Letter of the 30th May.

I am, &c^a.,
HOLDERNESSE.

87. ALBEMARLE TO HOLDERNESSE

(*S. P. For., France, vol. 247*)

Paris, Wednesday, 13th June, 1753.

MY LORD,

You will have observed, by my late letters, that I put Mo^r. de St. Contest in mind, in talking with him on the Dispute, with the King of Prussia, of the length of time that had elapsed since His Most Christian Majesty had first offer'd his Advice to him, and no Answer yet returned ; I went to him Yesterday, with a Resolution to acquaint him, that His Majesty began to be surprized that no Determination had yet been taken, by the King of Prussia, in consequence of that Advice, and that the delaying too long to give an Answer, or refusing to give any at all, were the same thing, in a Case of this Nature, and would equally justify His Majesty in doing Himself Right.—But I chose, at the same time, that the Conversation should be begun by him, that it might not be framed entirely on what I should say. After talking of some indifferent Matters, and his telling me that nothing had been yet concluded at Vienna, on

the last Proposals of the Elector Palatine, He said, that tho' he had nothing positive to communicate to me from Berlin, yet he assured himself, that the King of Prussia would be brought to consent to the Payment of what remains due on the Silesia Loan, since His Majesty had promised to do Justice on any Complaints His Prussian Majesty should be founded to make, but that he would write to Mo^r. de Mirepoix, and desired me, at the same time, to prepare Your Lordship, that it would be expected it should be explained, what was mean't by saying that Justice should be done according to the *Voyes usitées et reconnues*, to which, I told him, I had received no kind of Instructions to enter into any Discussion on this head, but that in my opinion the Words explained themselves to be such a Justice as was agreable to the known Laws and Constitution of Great Britain, and to what had been practised in cases of the same kind, but that however that might be, the Point now was, and which would never be lost sight of, to satisfy His Majesty, for the National Insult that had been offer'd, by paying, as a Step previous to any Negociation, the Sum that remained due to His Subjects; That this was His Majesty's firm Resolution, which I had often acquainted him with, after which, and not till after it, (as I understood,) such Explanations would be given, as would be desired, to redress any Complaints that might be justly made, if any such existed.—Mo^r. de St. Contest made me a general reply of the good hopes he had of the Two Courts coming to a friendly Understanding, and Our Conversation went no farther at present; I accepted his Invitation to dine with him Yesterday; after Dinner he took me aside, and from the Impression my Firmness had made upon him, he said to me, *n'enflammez pas les choses, j'espere qu'il y aura moyen de s'accommoder, dites moi ce que Vous entendez par les Voyes usitées et reconnues*; I repeated to him what I had already said, and added, that if my Court thought proper to give any Explanation to it, Mo^r. de Mirepoix could have it best from Your Lordship, that as to my enflaming Matters, I hoped he had a better Opinion of me, and knew me more, than to believe I had any other Desire, than that of cultivating, by every means, the Peace and Good Harmony; that I should act contrary to the Orders I was charged with, if I did otherwise, and that I always kept myself within the just Bounds of a faithfull Narrative, of what pass'd in my Conversations with him. He said, he did Justice to my Sentiments, but that he mean't only to recommend it to me to try to soften Matters, and I then left him. I thought I could plainly perceive he had received some Letters from Berlin, tho' he was unwilling to own it, and I am persuaded he has; The next time I see him, he may possibly be more

open with me, or perhaps Mo^r. de Mirepoix may be instructed, to speak more plainly to Your Lordship.

I have the honour to be, with the greatest Respect,

My Lord,

Your Lordship's

Most obedient, and most humble Servant,

ALBEMARLE.

[*Endorsed*]. Paris, 13th June, 1753. H. E. The E^l of Albemarle. R 17.

88. HOLDERNESSE TO ALBEMARLE

(*S. P. For., France, vol. 247*)

Whitehall, 21st June, 1753.

H. E. The Earl of Albemarle.

MY LORD,

Having nothing in Command from His Majesty, nor any material Advices to send Your Excellency, I avoided giving You the Trouble of an unnecessary Letter on Thursday last, & only directed Your Letters of the 6th & 9th Inst., to be acknowledged from my Office; I have since received the honor of Your Letters of the 13th Inst., and laid them before The King, & have the Satisfaction to be able to assure Your Excellency of His Majesty's entire Approbation of the Manner in which You talked to Mons^r. de St. Contest upon the Subject of the Dispute with The King of Prussia.—You will easily imagine, The King was extremely surprized to find, that Mons^r. de St. Contest, instead of being able to give some positive Answer, was aiming at entering upon Conditions in return for the Satisfaction The King insists upon from the Court of Berlin. I imagined The Duc de Mirepoix would certainly have received some Instructions from His Court upon that Head, but to my great Surprize, His Excellency acquainted me on Tuesday last, that He had not received Letters from France for above a Fortnight; I took that Opportunity of acquainting Him with what had passed between Your Lordship & the French Ministers, & begged to know of him, in what Manner He had represented to his Court the Conversations He had had with The King's Servants here, & in particular, what was meant by offering to do Justice upon any Demand from The King of Prussia, which should be found to be reasonable, *selon les Voyes usitées et reconnues*; & in particular, whether he had ever given his Court any Reason to hope, that His Majesty could be induced to desist from the just Satisfaction The King demands from the Court

of Berlin, previous to any Negociation ; The Duc de Mirepoix very candidly informed me, that He had constantly taken care to acquaint His Court, that the taking off the Arrest upon what Remains due of the Silesia Loan, was what The King positively, & peremptorily insisted upon, & that that Step once taken, His Majesty would be ready to do Justice, if any real Injury had been done to His Prussian Majesty's Subjects, *selon les Voyes usitées et reconnûes*, which Words He explained to me, precisely in the Manner Your Excellency had stated the Question already to Mons^r. de St. Contest, & indeed those Words, can have no other Meaning ; I then desired His Excellency would recollect, whether in any Conversation with The Duke of Newcastle or Myself, he had observed, that We deviated in the least from this Language ; He assured me, that He did not remember that We ever had, & that He had always most punctually related to His Court, what had passed between Us. I can add nothing to what I have already wrote to Your Excellency upon this Subject ; The King's Opinion & Resolution are still the same, and the Court of France will judge how far it is Their Interest, to risque the Consequences which a Delay, or a Refusal of the Justice The King demands, may possibly produce.

I am, &c^a,

HOLDERNESSE.

[*Endorsed*] Dra^t to The Earl of Albemarle, 21st June, 1753.

89. ALBEMARLE TO HOLDERNESSE

(*S. P. For., France, vol. 247*)

Paris, Wednesday, 27th June, 1753.

MY LORD,

I am extremely happy, in the Approbation His Majesty is pleased to give to my Endeavours, which, the letter Your Lordship did me the honour to write to me the 21st Inst., has acquainted me with : I could not help expressing my Surprize to Mo^r. de St. Contest, on finding, that, tho' he had promised to write to Mo^r. de Mirepoix in relation to the Dispute with the King of Prussia, that Ambassador had not received any letters from him for a long time ; he excused himself for the Omission from the number of Home Affairs, which, he said, had prevented him.—Whatever may be the Stile, used by Mo^r. de St. Contest, in his Correspondence with Mo^r. de Mirepoix, I have held but one constant, and uniform Language with him, on that Subject, conforming myself to the Commands Your Lordship had sent me from His Majesty, and it

is with great Satisfaction I find, by your last Conference with Mo^r. de Mirepoix on my letter of the 6th Instant, that he had represented to his Court the Conversations he had had with the King's Servants in London, and had explain'd in his letters His Majesty's Expectations of the Arrest being taken off the Silesia Loan, as the previous Condition to all Negotiation, as well as what was to be understood by the *Voyes usitées et reconnuës*, to which he had given the same Sense I had already done. After all this, I am at a loss to guess, upon what foundation Mo^r. de St. Contest could imagine, that my Discourse with him was not of a Piece with my Instructions. I asked him, Yesterday, whether he had received any letters lately from Mo^r. de Mirepoix, he told me he had, and that, that Ambassador had acquainted him with his late Conversation with Your Lordship, and that he expected to have another with the Duke of Newcastle, upon His Grace's return from Cambridge; but that he (Mo^r. de St. Contest) had not had any letters from Berlin, since he had seen me, and on this occasion, what pass'd between Us, was to the same purpose as at Our former Meetings, that is, by his expressing his hopes, that his Master's Advice to the King of Prussia, would be followed, but that a fuller Explanation of the *Voyes usitées &c^a*. would be desired; and by my reminding him of the long time he had hoped, without having yet any Effects, and insisting on the payment of the Silesia Loan prior to all other Matters.

I have the honour to be, with the greatest respect,

My Lord,

Your Lordship's

most obedient, and most humble Servant,

ALBEMARLE.

[*Endorsed*] Paris, 27th June 1753. H. E. The E^l of Albemarle. R 30th, by Thompson.

90. NEWCASTLE TO ALBEMARLE

(*S. P. For., France, vol. 247*)

Whitehall, July 5th, 1753.

Earl of Albemarle.

King of Prussia.

MY LORD,

On Saturday last, Thompson, The Messenger, arrived, with Your Ex^{ty}'s Letter of the 27th June, to the Earl of Holderness; which I received, in His Lordship's Absence.

As I have had several Conversations with the Duc de

Mirepoix, since my Return from Cambridge, relating to The Disputes, with The King of Prussia ; His Majesty has commanded Me to send Your Ex^{ty}. an Account of them ; Whereby You will see The Orders, which Mo^r. de Mirepoix has received, from His Court, and the Answers which I have been directed, by The King, to return to Them.

I chuse, to avoid Mistakes, when there is any Thing material, to take a Minute, in writing, of what passes in Our Conferences, and to read It, afterwards, to Mo^r. de Mirepoix, & the following Paragraph contains the Minute Itself.

With regard to the Affairs of Prussia, The French Ambassador acquainted me, ' Que le Roi Très Chretien n'a negligé aucun Soins pour l'Accommodement avec la Prusse.'

' Le Roy de Prusse voudroit bien se tirer d'Affaire, sans montrer la Queue.

' Il prétend, que S'il fait lever l'Arrêt, Sans s'assurer de rien ; Cela seroit trop humiliant pour lui.

' Mo^r. Le Duc de Mirepoix souhaite de Savoir, Qu'en cas que la France pût reprendre que Le Roy de Prusse levât la Saisie des Effets Silésiens ; Elle pût recevoir, en même Tems, des Assurances, par le Canal des Ambassadeurs, qu'on entrera en Matière avec le Roy de Prusse, sur Ses prétendus Griefs ; — Et si, dans ce Cas là, il est indispensable, que tous les Sujets de Grief passent par le Cours Ordinaire de tous les Tribunaux ; — Et s'il ne seroit pas plus expédient, pour l'une, et l'Autre Cour, de convenir de nommer réciproquement des Commissaires, pour nettoyer entièrement toutes ces Sortes d'Affaires, de quelque Nature qu'Elles puissent être ?'

' Le Duc de Newcastle a répondu, que, pour ce qui regarde la Nomination de Commissaires ; Il croyoit, que cela seroit impracticable.'

' Le Duc de Newcastle a dit aussi, qu'il ne savoit pas, si les Sujets du Roy de Prusse n'avoient pas laissé échapper le Tems, dans lequel ils auroient dû faire les Appels aux Cours Supérieures ; Et s'Il n'avoit pas fait, par Ses Procédés, quelque Démarche, qui rendroit ces Appels Nuls.'

I immediately made a Report to His Majesty of what had thus passed ; — And, as Mo^r. de St. Contest had asked of Your Ex^{ty} an Explanation of The Words, *Voyes usitées et connues* ; And continued to say, That a fuller Explanation of Those Words would be desired ; The King was pleased to order me, to return the following Answer to The Duc de Mirepoix.

' Que le Duc de Newcastle se tient à ce qu'il a dit, Que la Nomination de Commissaires seroit impracticable ; Vù qu'elle changeroit entièrement la Nature des Procédures en ces Cas.'

' Il a, cependant, les Ordres du Roy, d'assurer M^r. de Mirepoix, Qu'après que le Roy de Prusse aura contenté les

Sujets de Sa Majesté sur ce qui Leur est dû en reste de l'Emprunt sur la Silésie ; Le Roy sera prêt de rendre Justice, selon *les Voyes usitées et connues*, sur toutes les Plaintes de Sa Majesté Prussienne ; par lesquelles Voyes on doit entendre, l'Appel, dans tous les Cas où il est admissible, à la Cour Supérieure ; qui est composée de Personnes d'un Rang élevé, qui sont audessus de tout Soupçon de Partialité, et dont les Décisions ont été sans Reproche.'

Mo^r. de Mirepoix has promised, to make an exact Report, to Mo^r. de St. Contest, of all that has passed ; And, I am persuaded, will represent it in as favorable, That is, in as true, a Light as possible.

Your Exc^y will be pleased to observe, That Neither the Proposal for Commissaries, Nor an Assurance, *Qu'on entrera en Matière avec le Roy de Prusse, Sur Ses prétendus Grieffs*, can ever be agreed to ; As that might tend to admit a Charge, or Demand, upon The Crown, before The King of Prussia had taken The necessary Steps, and done what had always been practised in the like Cases.—And such an Admission, might be made a Precedent, hereafter, for other Courts, and particularly for The Disputes now depending with the Court of France. Whereas, the Explanation here given, to the Words *usitées, et connues*, is clear, liable to no Objection, and ought to be Satisfactory. For as The King of Prussia has no Pretence to favour, He can ask no more, than to have the same Liberty to obtain Justice for His Subjects, which all other Powers have had ; And that, in Cases, where those Subjects have not, by Their voluntary Omissions, precluded Themselves from the Benefit of Appeal. As The Court of Appeal will be Judge of those Cases ; There is no Doubt, but that all possible Justice will be done upon Them.

I have fully explained to Mo^r. de Mirepoix, the Necessity of having an immediate, and clear, Answer. This Affair has already been too long depending, And His Majesty cannot suffer It to be suspended much longer, by the Going and Coming of Messengers, with unsatisfactory Answers.

The King has, now given a full Explanation of The Words *Voyes usitées et connues* ; Which, indeed, seemed clear enough, without It.—His Majesty hopes, that The French King is already authorised, by The King of Prussia to accept such a reasonable Explanation, as This must appear to be. If not, You will desire to know of Mo^r. de St. Contest, what The French King would, Himself, propose ; that His Majesty might judge, whether it is Such, as He may think proper to accept. For, if The Answer returned to Mo^r. de Mirepoix, and now sent to Your Exc^y, is to go to Berlin, and to be commented upon There ; No good End can be expected from this Negotiation.

One should naturally imagine, from the Question put by The Duc de Mirepoix, that France was authorised to Answer; That The King of Prussia should take off the *Arrêt*, provided satisfactory Assurances, &c^a., could be given; And The King thinks, that the Explanations now given, should be satisfactory; And They are all, that His Majesty, considering the Nature of the Case, does think proper to give.

I doubt not, but Your Excellency will explain This Matter fully to Mor. de St. Contest; And You may imagine, that, after so much Time spent in this Affair; The King will be very impatient for an Answer to this Letter.

I am, &c^a.,
HOLLES NEWCASTLE.

P.S.—I send Cleverley, The Messenger, with these Letters, that Your Ex^{ty} may be sure to have them Time enough, to consider, and digest, the Contents of Them, before You have Your ordinary Conference with Mor. de St. Contest, on Tuesday next; And I must beg Your Excellency would redispach Cleverley, as soon as you shall have executed His Majesty's Orders contained in these Letters.

91. NEWCASTLE TO ALBEMARLE

(S. P. For., France, vol. 247)

Whitehall, July 5th 1753.

Very Secret.

Earl of Albemarle,
MY LORD,

I am, in the greatest Confidence, to acquaint Your Ex^{cy}, for Your own Information *only*, And of which You will take No Notice to Any Body, That Mons^r. de Mirepoix has wrote, in the Strongest Terms, to Mons^r. de St. Contest, upon the Subject of My other Letter; And that He has wrote a private Letter, to Him, desiring Him to think Seriously upon this Affair; and acquainting Him, That, Tho' It is undoubtedly true, that The King wishes Peace; Yet, that It is certain, that His Majesty is determined to support this Affair with The King of Prussia; And He has also desired to know, privately, Mons^r. de St. Contest's thoughts.—In short, The French Ambassador thinks as rightly, and as honorably, upon This Point, as a Man can do; And I should hope, It will have some Effect upon His Court.

I may, in Confidence, acquaint Your Ex^{cy}, (tho' You are to take No Notice of it,) that, If the Answer to these Letters,

should not be satisfactory; I think it most probable, that You will have Orders to declare, that His Majesty, after so much Time, spent so uselessly, cannot any longer, delay doing Himself, and His Subjects, Justice, by Making, or Allowing Them to make, *Reprisals*, for The Detention of Their Property, contrary to all Justice, and the express Stipulations of The Most Solemn Treaties, which, however, may be done, by The Law of Nations, without any Infraction of the Publick Peace.

I am persuaded, that Your Knowledge of This, will shew Your Ex^{cy} the Necessity of getting, if possible, some explicit Answer from Mons^r. de S^t. Contest.

I am, &c^a.,
HOLLES NEWCASTLE.

[*Endorsed*] Dra^t to The Earl of Albemarle. July 5th, 1753.
Very Secret. By Cleverly.

92. ALBEMARLE TO NEWCASTLE

(*S. P. For., France, vol. 247*)

Paris, Wednesday, 11th July, 1753.

Copy. *Very Secret.*

MY LORD,

I return Your Grace many Thanks, for the Confidential Information, contained in your very Secret Letter of the 5th Instant; I wish Mo^r. de Mirepoix's Opinion may have the Weight at this Court which it certainly deserves, but I am almost afraid, the superior Interest of Prussia, will not permit Them to listen to any Thing, however Reasonable it would be, which is not dictated from thence. I beg Your Grace would be assured, I shall make no other than a discreet Use, of what you have entrusted to me.

I have been informed, privately, by a particular Friend of Mine, That Mr. Keith, (The late Lord Marshall) had said, in a Conversation, on the Complaints of Our Court, against that of Berlin, That suppose Letters of Reprizal should be given, all that could be met with, would be the Ship sent from Embden last Year to the East Indies, out of which, They could take nothing from the King of Prussia, but His Flag; none of the Effects belonging to Him, but to some Dutch, Flemish, & French Merchants.

I have the Honor to be, &c^a.,

ALBEMARLE.

93. NEWCASTLE TO ALBEMARLE

(S. P. For., France, vol. 247)

Whitehall, July 12th, 1753.*Secret.*

Earl of Albemarle.

MY LORD,

His Majesty has commanded me, to send Your Ex^{ty}. an Account, for Your Information only, of a very serious Conversation, which I had, Yesterday, with The Duc de Mirepoix.

The French Ambassador began, (From a Conversation, I believe, which He had had with Mons^r. Michell, The Prussian Secretary,) By Expressing His Fears, that the Disputes with The King of Prussia, would not be accommodated, upon the Foot of the Answer, which I gave Him, last Week, and Transmitted to Your Ex^{ty}.

For, said He; Tho' You know, How much I think His Prussian Majesty to blame; I am afraid, He will never take off The Arrêt, on Condition only, that those Disputes should be determin'd, *dans Vos Tribunaux*; Tho', He said, He Himself was persuaded, that Every Thing would be done there, in the most honorable, and just Manner.

I answer'd, that We could go no further; And that, when once a Prince had acted, so contrary to all Rules of Justice, and Reason, as The King of Prussia had done, in this Instance; If the Disputes were to be made up; That Prince must be contented, to make some Concession, or Advance.

I then told Him, very seriously; that Nothing but The King's Regard, to His Most Christian Majesty's Interposition, had made His Majesty acquiesce so long:—That Every Thing depended upon the Return, We should have, to the last Answer, sent, from Hence, to His Court.

That the Resolution was taken; And that We were not afraid of The King of Prussia. I said this, particularly, from the Hint, which Your Ex^{ty}. gave, in Your *Private* Letter to My Lord Holderness; That Mons^r. de St. Contest had said; That, notwithstanding what The English had given out; They dar'd not venture to do any Thing.

The French Ambassador receiv'd what I said, in the most decent, and handsome Manner, imaginable:—Express'd His Obligation for the Regard, shew'd to The King, His Master's Interposition; And seem'd oblig'd to me, for talking to Him, in this plain, & open Manner.

He said, He had wrote, very fully, last Week, to His Court; And would not fail, again, to represent this Affair, in its true Light. I could plainly see, that My Discourse made a great

Impression upon Him ; And I hope, It will do so, upon His Court.

He talk'd of the Service, which He might be able to do, during His short Stay in France.—And I gave Him to understand, that It was My Opinion ; that His Majesty would not suffer the Negotiation to be carried on, any longer ; If the Answers, now expected, should not prove Satisfactory.

All, that I said to Him, was from Myself, without any Order from The King.—And I was greatly induced, to continue to talk to Him, in This Manner, from what is suggested in Your Ex^{ty}'s *private* Letter to My Lord Holdernesse, that it might be proper, to name a Day, for The King of Prussia, to give His final Answer.

I am, &c^a.,
HOLLES NEWCASTLE.

94. ALBEMARLE TO NEWCASTLE

(*S. P. For., France*, vol. 247)

Compiègne, Wednesday, 18th July, 1753.

Separate.

MY LORD,

After what had passed between Mo^r. de St. Contest and me, relating to Dunkirk, of which I have given Your Grace an Account, in my other Letter, I began my Conversation with him, on the disputes with the King of Prussia, by saying, that I imagined, he was as well informed from M. de Mirepoix, of the Conference he had with Your Grace on that Subject, as I was, by my last Letters, and that he was therefore prepared for what I should say to him upon it ; Tho' He owned, he had received such an Account from their Ambassador, I beg'd leave nevertheless to read to him that Part of Your Grace's Letter, which contains the Minute of that Conference ; After having heard me with Attention, he confirm'd to me what Mo^r. de Mirepoix had said to Your Grace, by Order of his Court ; And on my entring with him upon an Explanation of the *Voyes usitées et connuës*, by which His Prussian Majesty might expect to receive Justice if he had any Cause of Complaint, He replied, that Mo^r. de Mirepoix might have given such an Answer as would have fully satisfied all the Arguments on that Head ; since not only he thought it reasonable that Commissioners should be Appointed on both sides, to consider of the Grievances complained of, but that there were Precedents of it, which shew'd that the Necessity of going thro' the Ordinary Proceedings of Our Tribunals was not at all indispensable,

nor could it be admitted that the Decisions of Our Courts of Judicature were, in Cases of this kind, binding against the Subjects of another Crown ; that he was preparing a Memorial, which he should send very shortly to Mo^r. de Mirepoix, to be delivered to Your Grace, in which he would cite the Treaty of St. Germain en Laye, between England and France in 1655, and that of Westminster, between England and Denmark in 1669, by both which, it appears that Commissaries were appointed to inquire into Matters of the kind now in Dispute ; That what He thought might be proposed, was, for His Majesty and the King of Prussia to make reciprocal Declarations, to be deposited with the Court of France, by which His Prussian Majesty should engage to take off the Seizure of the Silesia Loan, and Pay what remains due, on His Majesty's consenting to treat with him between Crown and Crown, on the Complaints He has to make of unjust Captures and Condemnations ; And His Majesty by His Declaration to agree, that on the total Payment of the Silesia Loan, His Majesty will enter into such a Negotiation.

With respect to the Treaties Mo^r. de St. Contest quoted, I told him, that I wanted nothing more to prove to him, that the Ordinary Course of Tribunals was to take place, unless in particular Cases where it was Stipulated by Treaties to be otherwise reserved ; and that it was therefore manifest, that Treaties were necessary, (or why should it be expressly provided for by them) to alter the known established dispositions of a Country for the Administration of Justice ; That as for his proposal, I could by no Means enter into it, nor did I think it would be agreed to by His Majesty, as the consenting to name Commissaries, or to discuss the Matter with the King of Prussia, upon his pretended Complaints, might tend to admit a Charge or demand upon the Crown, before His Prussian Majesty had taken the necessary Steps, and done what had always been practised in the like Cases ; And that such an Admission might be made a Precedent hereafter ; whereas the Explanation now given, of the *Voyes usitées & connues*, is clear and ought to be satisfactory. That all I could consider in the present Case, was that the King of Prussia had offer'd a great and National Insult, which required reparation, and therefore it was proper and necessary His Prussian Majesty should make some Concession or Advance, and the previous Condition of all Negotiation, was his taking off the *Arrêt* from the Silesia Loan, which was neither hard nor unreasonable. Mo^r. de St. Contest told me hereupon, that he should be able to give me a more precise Answer in a short time, and desired I would not Acquaint Your Grace with all that had now passed between Us ; which however, is of such

a Nature, as to deserve Communication, that Your Grace may be prepared in some Measure for what may hereafter be proposed; I would only beg, it may in the interim be kept from Mo^r. de Mirepoix. I shall dispatch Cleverly to Your Grace with what Mo^r. de St. Contest may say further to me upon this Subject, which I expect will be by next Saturday.

I have the honour to be, &c^a.,
ALBEMARLE.

95. ALBEMARLE TO NEWCASTLE

(*S. P. For., France, vol. 247*)

Compiegne, Saturday, 21st July, 1753.

Separate.

MY LORD,

Mo^r. de St. Contest was the first to begin the Conversation with me to day, on the Subject of His Majesty's Complaint, against the King of Prussia's Proceedings, in which he renew'd the Proposal, of the reciprocal declarations between His Majesty and the King of Prussia, to be left with this Court, of which, I had the honor to give Your Grace the particulars, in my separate dispatch of Wednesday last; to which he added, that as it would be necessary, that Commissaries should be appointed, to inquire into, and adjust, the Grievances complained of by the King of Prussia, if it should happen that they could not agree, the Question might then be referr'd, either to this Court, to that of Denmark or of Sweden, or to the States General, as Nations, the most vers'd in Matters of Commerce and Navigation, to be decided by either of them; That, as to the Apprehension Your Grace had alledged to Mo^r. de Mirepoix, of such a proceeding being hereafter drawn into Precedent, by Sweden or Denmark, there could be no danger of that, as the particular Treaties Great Britain had with those Nations, left no room for any doubt.

That this method now proposed, was the only one, that could be thought of here, to accelerate an Accommodation, the Terms hitherto insisted upon, by my Court, being too Mortifying for the King of Prussia, to Submit to, and it could not be reasonably expected he should.—He then expressed His Surprize, at what, he said, was mentioned in a Letter he had received from Mo^r. de Mirepoix, since our last Conference, which was, that Your Grace had own'd to him, 'Que bien que les propositions, faites par la Cour d'Angleterre, étoient trop humiliantes, pour que celle de Prusse pût les accepter, et

même qu'elles étoient impraticables, Cependant on ne pouvoit s'en départir.'

I have given Your Grace the very words Mo^r. de St. Contest made use of to me, which I put down in writing. I told him, I was perswaded there was some Misunderstanding, as I could not be convinced Your Grace could have made any such declaration; That as to his proposal, of appointing Commis-saries, I was sure it would not be agreed to by His Majesty. —The Truth is, that I believe their Intention to be, to make a Precedent of such a Method, to be applied to their own Case, in Matters of Prizes; However, he told me, that this proposition was the result of a Council of State, that had been held the day before yesterday, in which, the dispute with the King of Prussia, had been taken into Consideration, which it would not be possible to bring to an Accommodation, if the Terms first proposed by my Court, were finally persisted in.—And, that tho' it might be concluded from them, that the Inter-position of this Court would prove ineffectual, yet, such was their desire of maintaining Peace and Harmony, that they would set every Engine they could at work, to bring the two Courts to an Amicable Reconciliation; with which view, it was, that the present proposition had been thought of, and which he hoped, would not be rejected by my Court.

I have the honour to be, with the greatest Respect,

My Lord,

Your Grace's

Most Obedient and Most Humble Servant,

ALBEMARLE.

[*Endorsed*] Compiègne, July 21st, 1753. Earl of Albemarle (Separate). Prussia. R 24th, by Cleverly.

96. HOLDERNESSE TO ALBEMARLE

(*S. P. For., France, vol. 248*)

Whitehall, 26th July, 1753.

Private.

Earl of Albemarle.

MY LORD,

I must not pass in Silence the Paragraph in Your Excellency's Letter of the 21st Instant, wherein The Duke of Newcastle's conversation with Mons^r. de Mirepoix, appears to have been so grossly misunderstood by the French Ministers; His Grace, after recollecting what passed with the French Ambassador, has set down, in Writing, what recurred to His Memory, and this Morning read over, to the Duc de Mirepoix, the Paper which I have the Honour to inclose herewith; That Minister, whose Candour is sufficiently

known to Your Excellency, immediately confessed, that He never had understood The Duke of Newcastle in a different Sense from what is stated in that Paper, & that He is very sure He had never represented, to His Court, what had passed, in any other Light ; However, as it is necessary This Mistake should be cleared up, wheresoever it arises, I am to desire that your Excellency would take an Opportunity of reading over this Note to Mo^r. de St. Contest, and of clearing The Duke of Newcastle from the Imputation of having said what He never did, nor never could mean. As I cannot suspect Mo^r. de St. Contest of Misrepresentation, I am persuaded this Matter will soon be set right.

I am, &c^a.,

HOLDERNESSE.

P.S.—The Duke of Newcastle does not write to Your Ex^cy by this Messenger, but desires me not to omit His Compliments to you.

97. NEWCASTLE'S NOTE VERBALE FOR MIREPOIX

(S. P. For., France, vol. 247)

Le Duc de Newcastle est un peu Surpris, qu'on ait pu même supposer en France, qu'il auroit dit quelque chose de si peu convenable que ceci.

' Bien que les Propositions faites par la Cour d'Angleterre étoient trop humiliantes, pour que celle de Prusse pût les accepter, & même *qu'elles étoient impracticables*, cependant on ne pouvoit s'en départir.' Aveu fort extraordinaire.

Le Duc de Newcastle proteste, qu'il n'y a jamais pensé de cette façon, ni dit un seul mot dans ce sens. Il se souvient parfaitement bien de ce qu'il a dit à cette Occasion ; Et Il connoît trop bien la Droiture de Mons^r. Le Duc de Mirepoix, pour pouvoir douter un moment, qu'Il ne convienne de ce qui s'est passé.

Le Duc de Newcastle croit pouvoir répéter même les paroles, dont Il s'est servi : Savoir, M^r. le Duc de Mirepoix ayant allégué, que ce qui avoit été proposé ici seroit censé par le Roy de Prusse comme une Démarche humiliante pour Lui ; Le Duc de Newcastle, dans une Conversation amicale & Libre, repondit :

' Qu'il en étoit avec des Princes comme avec des Particuliers : Si quelcun [*sic*] avoit agi contre toutes les Règles de Justice et de Raison, et souhaitoit que la Dispute s'accommodât amiablement ; Il faloit que cette Partie fit quelque Concession, ou quelque avance.'

Le Duc de Newcastle s'en tient encore à ces Propos, sans

qu'il y trouve rien de déraisonnable ni de surprenant ; Et bien loin de tendre à aigrir les Choses, ils ne peuvent avoir été tenus, que dans le Dessein d'avancer un Accommodement, sans la moindre Intention de chôquer qui que ce soit.

[*Endorsed*] Note. In the Earl of Holderness's private Letter to the Earl of Albemarle 26th July 1753.

98. HOLDERNESSE TO ALBEMARLE

(*S. P. For., France, vol. 248*)

Whitehall, 2^d August, 1753.

H. E. The Earl of Albemarle.

MY LORD,

I acquainted Your Lordship on Thursday last, that I hoped I should be able to write fully to You by this Messenger, upon the Subject of the Dispute with The King of Prussia, & shall now give You an Account of what has passed with the French Ambassador here, & acquaint You with The King's Pleasure in consequence of It.

The Duc de Mirepoix read over last Week to some of The King's Servants, a Dispatch he had received from Mons^r. de S^t. Contest, containing in Detail, the several Arguments He had made use of to Your Excellency in support of His Proposal of referring The King of Prussia's Complaints to Commissaries, which, He would make the Condition of His Prussian Majesty's taking off the *Arrêt* of what Remains due upon the Silesia Loan.—But this Proposal Your Excellency will easily imagine could never be listened to here, & The Duc de Mirepoix has been constantly told, that it would not be admitted.

It is needless to enter minutely into every Thing that has passed in the long Conferences which have been held with the French Ambassador ; Upon the Whole, that Minister has always been given to understand, that The King looks upon the Proceedings of His Prussian Majesty, as a National Affront, and is determined to abide by the Demand of a previous Satisfaction, which Point Your Excellency has so properly supported, in consequence of the frequent Instructions You have received.

This Negotiation seems now to be drawn into a narrow Compass, so far as relates to the Court of France ; His Most Christian Majesty looks upon the Satisfaction demanded by The King, as *trop humiliant pour Le Roy de Prusse* ; And The King, on His Part, determines to reject all Proposals, 'till that Satisfaction is previously given.—And the better

to enable Your Excellency to convey clearly, & explicitly His Majesty's Meaning to the Court of France, I have The King's Orders to transmit to You a Note which has been drawn up, in consequence of Your Letters of the 18th & 21st of July, which has been communicated to the French Ambassador; I must observe to You, that the first Part of this Paper so far as the Words '*de la Part de Sa Majesté Tres Chrétienne*', would have been transmitted to Your Excellency by the last Messenger, had it not been for the Hopes Mons^r. de Mirepoix seemed to entertain, that by postponing it for one Week, He might possibly receive Instructions more conformable to The King's Views & Intentions; & that Minister having observed, that all farther Negotiation with His Court upon this Point, was at an End by the Paper as it then stood, (the Consequences of which He seemed greatly to apprehend,) the last Paragraph beginning with the Words, '*Le Roy laisse à la Consideration du Roy Tres Chrétien*', was added to It, with which He seemed much better satisfied.

How far the Duc de Mirepoix is intrusted with the real Secrets of His Court, I will not pretend to determine; or whether His own Good Inclination for the Preservation of the Peace may have induced Him to take several of the Steps He has done, during the Course of this Transaction, but I think it is easy to see, that His Court is very far from being desirous of letting Things go to extremity; & I may in Confidence acquaint Your Excellency, that The King of Prussia seems greatly alarmed at the Motions of some Russian Troops toward the Frontiers of Livonia; & I have Reason to believe, His Prussian Majesty's Apprehensions from that Quarter are so strong, that He will not, perhaps, be sorry, to find a Loop-Hole to get out of the disagreeable and embarrassing Situation into which His own violent Measures, & unjust Proceedings have brought Him.

I am &c^a.

HOLDERNESSE.

99. INSTRUCTION FOR ALBEMARLE

(S. P. For., France, vol. 248)

August 2, 1753.

Le Duc de Newcastle ayant, par Ordre du Roy, déclaré à Mons^r. Le Duc de Mirepoix; Et Le Comte d'Albemarle ayant fait de même à Mons^r. Le Marquis de St. Contest;

'Que la Nomination de Commissaires seroit impraticable, vû qu'Elle changeroit entièrement la Nature des Procédures en Ces Cas'; Mais, 'Qu'après que Le Roy de Prusse auroit

contenté les Sujets de Sa Majesté, sur ce qui Leur est dû en reste de l'Emprunt sur la Silesie ; Le Roy seroit prêt de rendre Justice, selon les Voyes usitées, et connuës, sur toutes les Plaintes de Sa Majesté Prussienne ; Par lesquelles Voyes, on doit entendre, L'Appel, dans tous les Cas, où il est admissible, à la Cour Supérieure ; qui est composée de Personnes d'un Rang élevé ; qui sont au dessus de tout Soupçon de Partialité ; Et dont les Décisions ont été sans Reproche.'

Et Mons^r. Le Comte d'Albemarle ayant mandé à Sa Majesté, par des Lettres, du 18, et du 21, du Mois passé, que Mons^r. de St. Contest n'avoit pas approuvé la Proposition susdite ; Et avoit proposé,

'Que des Déclarations réciproques fussent déposées auprès de la Cour de France ; par lesquelles, Sa Majesté Prussienne s'engageroit de lever la Saisie de l'Emprunt sur la Silésie, et d'en payer le Restant, dès que Le Roy consentiroit à traiter avec Elle, de Couronne à Couronne, sur les Plaintes qu'Elle auroit à faire, au Sujet de Captures, et de Condamnations injustes ; Et que Sa Majesté conviendrait, par Sa Déclaration, d'entrer dans une pareille Négotiation, dès le Payement total du susdit Emprunt' :

Et que, 'Comme, pour cet Effet, il seroit nécessaire, qu'il fût nommé des Commissaires, pour examiner, et ajuster, les Grieffs, dont Le Roy de Prusse se plaint ; En cas que ces Commissaires ne pussent s'accorder, La Dispute pourroit alors être renvoyée à cette Cour, à Celle de Danemarck, ou de Suède, ou aux Etats Généraux, comme les Nations, les plus versées dans les Affaires de Commerce, et de Navigation, afin d'être décidée, par l'une, ou l'autre d'Elles'.

Il est enjoint au Comte d'Albemarle, de déclarer à Mons^r. de St. Contest, Que Le Roy s'en tient à la Reponse donnée ci dessus par Son Ambassadeur ; Et ne sauroit aucunement consentir, Que l'Affaire, dans l'Etat où Elle est, soit renvoyée à des Commissaires, pour en faire la Discussion ; Ce qui changeroit entièrement la Nature des Procédures en Cette Sorte d'Affaires, et n'a jamais été pratiqué dans les Cas semblables ; Et seroit même très préjudiciable aux Parties respectives.

Il est ordonné, en particulier, au Comte d'Albemarle, de faire des Remercimens, de la Part du Roy, à Sa Majesté Très Chrétienne, de la Peine, qu'Elle a bien voulu prendre, en Employant Ses Bons Offices, pour terminer heureusement ces Différends.

Le Roy est fâché de ce que ces Bons Offices n'ont pas eu l'Effet désiré ; Et Sa Majesté est très éloignée d'en imputer le mauvais Succès au moindre Défaut d'Amitié, ou d'Egards, de la Part de Sa Majesté Très Chrétienne.

Le Roy laisse à la Considération du Roy Très Chrétien,

S'il convient de continuer cette Négociation ; À moins que, dans l'Espace de Quatre Semaines, à compter de ce Jour, Le Roy de Prusse ne juge à propos de s'expliquer d'une façon plus satisfaisante ; Ou, que Sa Majesté Très Chrétienne ne puisse trouver quelque Expédient, qui ne sera pas sujet aux Inconvénients, qui rendent la dernière Proposition, que Mons^r. de St. Contest a fait au Comte d'Albemarle, inadmissible, de la Part du Roy.

100. ALBEMARLE TO HOLDERNESSE

(S. P. For., France, vol. 248)

Paris, Wednesday, 15th Aug^t, 1753.

MY LORD,

In my Audience Yesterday of Mons^r. de St. Contest, who came to Paris to receive the Foreign Ministers, he acquainted me, that he found, by the Duc de Mirepoix's Letters, that he had had several Conferences with His Majesty's Servants, on the Dispute with the King of Prussia, which had concluded by telling that Ambassador, that His Majesty would not depart from His Resolution, of having the previous Satisfaction of the *Arrêt* being taken off from the Silesia Loan ; I replied, that I imagined then, in consequence of those Letters, that he was no Stranger to the Paper I had to communicate to him, (contained in Your Lordship's Dispatch of the 2^d Inst.) which had also been shewn to the Duc de Mirepoix, and served to confirm what that Ambassador had wrote, and I had so often assured him of, that His Majesty was determined to adhere to the Terms He had demanded, as a Satisfaction for the violent Insult which the King of Prussia had offered to the Nation ; and I begg'd leave to read that paper to him, which I did very deliberately from End to End.—He said, that he had been informed to the same purpose, by Mo^r. de Mirepoix, and that if We would yield nothing from those Terms, he was sorry to see the little likelihood of bringing things to an Accommodation upon that Footing.—That those which this Court had proposed, had been thought reasonable, and They had hoped His Majesty would not have rejected them ; That they were still, and always should be ready, and desirous, to do every thing they could to reconcile the Two Courts, but that no other means could be thought of here, than that of the reciprocal Declarations, and of naming Commissaries ; for as to the King of Prussia's submitting his Complaints to the ordinary Course of a Superior Court of Judicature, by way of appeal from an Inferior Court, in which His Subjects had

been condemned, he thought, little was to be hoped from thence, nor does the Law of Nations, in his Opinion, oblige him to abide by such kind of Decisions, in Affairs that were not between Subject and Subject, but of a National Concern, and therefore proper to be treated between Crown and Crown. He then ask'd me, whether I could think of any other way of bringing the Two Courts to a friendly Understanding, since, of the two Means that had been offer'd on both Sides, neither had been accepted?—My Answer to him was such as I thought consistent with the Instructions I had received, that after an Injury had been committed it was but natural to expect, that the Party Offending, should make some Advances by way of Reparation; that tho' it might be thought *humiliant*, yet a retraction was no more than Common Equity required, and was all that had been demanded in the present Case, and I could not conceive, therefore, that more moderate Proposals could be made. He repeated to me, he was sorry then to see no way of getting out of this embarrassing Situation, his Court having done every thing they could, and he had given me Their last Word.—I took Notice to him of the Civility with which His Majesty returned His thanks to The Most Christian King for His Good Offices, which, tho' they had not proved successfull, it was not imputed either to any want of Friendship, or of regard on His Most Christian Majesty's part; And I then added, that I would not yet understand, that he, (Mo^r. de St. Contest) gave me a Denial of using any farther Endeavours, to find some Means of healing the present Division, particularly as His Majesty had offer'd four Weeks more, if His Most Christian Majesty should think it proper, to bring the King of Prussia to explain himself in a more satisfactory manner;—and I desired him on the contrary to consult with his Friends, when he should return to Versailles, and open himself to me, if any Method should be thought of, that could be proposed; in which Case, if he did not care it should go under his Name, I would make no further Use of it than he would permit me; and that it would not be necessary to wait for another Tuesday to acquaint me with it, as I would be ready to attend him any other Day.—He observed to me, that the Space of four Weeks was too short a time, as near half of it was already elapsed since the Paper I had read to him had been wrote; but in order to take off that Difficulty, I told him, that, tho' I was not instructed to do what I was going to offer, yet, no Date being fixed to that paper, I would venture to take upon me, that the Term of four Weeks should be understood to commence only from the Day of my reading it to him; He seem'd better satisfied with this, and desired

my Court would be assured, of their sincere Inclination, to bring these Differences to an amicable Conclusion.

This was all that passed between Us on this occasion, without Mons^r. de St. Contest's promising any thing more particular to me, than that, if any Measures could be thought of, from which to expect Success, he would lose no time in acquainting me with it.

I have the honour to be, with the greatest respect,

My Lord,
Your Lordship's
most obedient, and most
humble, Servant

ALBEMARLE.

[*Endorsed*] Paris. 15th Aug^t. 1753. H. E. the E^l of Albemarle. R 19.

101. MICHELL TO FREDERICK

(Brit. Mus. Add. MS. 32846, ff. 70-2)

Copie
au Roy de Prusse.

Londres le 10 Août 1753.

SIRE

J'ai reçu les ordres Immediats dont il a plu à V. M. de m'honorer en date du 27^e du mois dernier avec les tres gracieux Rescrit du meme jour.

* En suite de ce que j'eus l'honneur de mander immédiatement à V. M. par le dernier Ordinaire, je me rendis hier chez le Duc de Mirepoix, qui me confirma non seulement les Dispositions, où étoient les Ministres de cette Cour par rapport à Leurs Differends avec V. M. ; mais de plus qu'Il avoit déjà envoyé un Courier à Sa Cour avec Avis, que depuis l'Arrivée du Sieur Pelham en Ville, on étoit disposé ici d'etouffer les Differends en question par le moyen d'une Somme d'Argent, que l'on promettrait à la France ; Qu'Il attendoit actuellement des Instructions, pour savoir, si cet Expedient seroit agréé, et approuvé par V. M., puisque ceux que l'on avoit proposé auparavant, comme la voye des Commissaires, et du Simple Arbitrage, ont été absolument rejettés. Voilà, où les choses en sont, et comme j'ai déjà eu l'honneur de mander plusieurs fois à V. M. la nature de ces Differends, aussy bien que la necessité, ou l'on est ici de soutenir la Legalité de Leurs Tribunaux, et les Precautions, que l'on y étoit obligé de prendre aupres des autres Puissances dans le cas, dont il s'agit, je ne saurois aujourd' huy, que me referer au Contenu de toutes mes Depêches sur cette matiere, en atten-

* [The following is in cypher].

dant que le Duc de Mirepoix reçoive des Instructions, et que V. M. se decide là-dessus ; m'étant contenté de dire simplement à cet Ambassadeur, que je savois assez des Sentimens de V. M. pour L'assurer, que si on en usoit avec discretion, et Decence avec V. M., et qu'on Lui rendit la Justice, qui Luy estoit dûë, il ne tiendrait jamais à V. M., que Ses Differends avec les Anglois ne s'accommodassent.

MICHELL.

[*Endorsed*] Londres le 10 Août 1753. Copie d'une Lettre de M^r Michell au Roy de Prusse. Rec^d y^e 10 Aug^t 1753. Decyphered.

102. HOLDERNESSE TO ALBEMARLE

(*S. P. For., France, vol. 248*)

Whitehall, 24th Aug^t 1753.

Earl of Albemarle.

MY LORD,

Your Excellency's Letter of the 15th instant, which I receiv'd on Sunday last, having brought an Account of the Continuance of the same Language, on the Part of the French Ministers, upon the Subject of the Dispute with the King of Prussia, which they have held, to you, for some time past, and, as His Majesty is still determin'd to abide by the Satisfaction He has demand'd, for the National Insult offer'd by the King of Prussia ; I will not trouble you any longer upon the exhausted Arguments which have been made use of, on both Sides, but proceed to inform you of what has passed, in several Conferences the Duc de Mirepoix has had with the King's Servants here, which have ended in his making a kind of Proposal, which he said, indeed, was without Orders from his Court, a Copy of which I inclose for Your Excellency's Information ; When it was laid before the King, His Majesty found it to be as inadmissible, as any of the other Expedients which have, hitherto, been suggested by the Court of France, for adjusting these Disputes ; and it is His Majesty's Pleasure, that you should acquaint M^r. de St. Contest, that, as Your Ex^{cy}. had taken it upon yourself to engage, That the Period of one Month, which was fix'd in the Paper I transmitted to your Excellency, in my Letter of the 2^d instant, for receiving any new Proposal, from the Courts of France and Prussia, should only commence from the Day on which you read that Paper, viz^t. the 14th instant, His Majesty is pleas'd to confirm what Your Ex^{cy}. had advanced ; But, that Term once expired, His Majesty

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will look upon this Negotiation to be absolutely at an End ; and that the King adheres to what He has always insisted upon, viz^t. That, previously to any Step being taken in this Affair, His Prussian Majesty should take off the *Arrêt* upon the Money due on the Silesian Loan ; And that then any Pretension, which the King of Prussia has, may be heard in the Common Course of the Courts of Justice, It being always to be understood, that if the Court of Appeal should not do Justice (which is not to be supposed) Then, and in that Case only, such Complaints might necessarily be, to be treated between Court and Court.

I am, &c^a.
HOLDERNESSE.

[*Enclosure*]

(*S. P. For., France*, vol. 248)

Copie.

L'Ambassadeur de France propose, que Le Roy, Son Maitre, fasse payer à My Lord Albemarle La Somme dûe par Le Roy de Prusse pour les Effets Anglois, hypotequés sur la Silesie ; Et que My Lord Albemarle soit chargé de remettre à Mo^r. de St. Contest les Lettres de Change pour la Valeur de la Somme, à laquelle Les Cours de France, et d'Angleterre, jugeront convenable de reduire les Pretensions du Roy de Prusse.

Ce 15 Aout 1753.

[*Endorsed*] Proposition faite par Mo^r. L'Ambassadeur de France. Sent to the E^l. of Albemarle. 24th Aug^t 1753.

103. ALBEMARLE TO HOLDERNESSE

(*S. P. For., France*, vol. 248)

Paris, Wednesday, 29th Aug^t 1753.

MY LORD,

The Day after I received the honour of Your Lordship's letter of the 24th, I saw Mo^r. de St. Contest, and read to him the proposition, made by the Duc de Mirepoix, for reconciling the Differences between His Majesty and the King of Prussia, which I represented, as having shewn the good Intentions of that Ambassador, but at the same time, that the Terms it contained were as little admissible as any of the other Expedients which have been hitherto suggested, and that His Majesty would not depart from that Satisfaction he demanded, and which had been so often repeated

as previous to any Step being taken on His part, in this Affair. I then acquainted him, that His Majesty had been pleased to confirm what I had advanced, that the period of one Month, which was fixed in the Paper I had read to him on the 14th. Inst., for receiving any new proposal from the Courts of France or Prussia, should only commence on that Day, but that, that Term once expired, His Majesty would look upon this Negotiation to be absolutely at an End. By the manner in which Mo^r. de St. Contest adopted, and approved, their Ambassador's proposition, it seem'd plain to me, that the Hint had been given him from hence, tho' the Duc de Mirepoix offer'd it as being his own, and without having received any Orders for it. Mo^r. de St. Contest expressed his Concern to find, that, notwithstanding the Desire of his Court to conciliate this Dispute, and the Endeavours They had used to that End, that none of the means proposed had been accepted of; that they could not think of any other, nor propose those which His Majesty insisted upon, which were look'd on as *trop humiliants* for the King of Prussia to submit to, and would therefore be too disagreeable to him for them to think of pressing them to him; that he was sorry to see this Negotiation must be given up, but that they had nothing to reproach themselves with, having shewn their friendly Inclination to both Parties.—I then took hold of the last part of Your Lordship's letter, to propose to Mons^r. de St. Contest, as from myself, a Method that might tend to bring both Parties to a reconciliation, and which, if he approved of it, I said, I would transmit to my Court to receive Orders upon it; and that was, that the King of Prussia should take off the Arrêt upon the Money due on the Silesia Loan, and that afterwards if the Court of Appeal, to whom the King of Prussia's Complaints should be addressed, should not do Justice (which I added, it was not possible to suppose) then they should be treated between Court and Court.—This, Mo^r. de St. Contest said, could not be accepted of, and that he could not but look upon the Negotiation as broke off, since he saw no likelihood of any proposition being made that would be agreeable to both parties, within the time limited; he said likewise, that after having shewn their Desire at this Court, to bring His Majesty and the King of Prussia to a good Understanding, they would chuse not to have it laid upon them to acquaint His Prussian Majesty with the Negotiation being absolutely at an End, but desired that the Duke of Newcastle would signify it to Mo^r. Michell; he said further, that he could not finish without observing to me, that to shew the little Satisfaction that was to be expected from Our Courts of Admiralty and of Appeal, he would

instance Mo^r. Peyrac's Case that was lately judged, in which Sentence was given in his favour, but as no Damages or Interests had been adjudged, the Computation of his Loss, and of the great Costs he had been at being made, exclusive of all his Trouble, the Sum he had recovered did not amount to half of what that person had a right to. I urged, that the Sentence depended on the Evidence Peyrac had produced, and that I could venture to affirm, from the known Integrity of the Persons who presided at the Court of Appeals, who were of the first rank in the Kingdom, that had the same Evidence been laid before him, or any other impartial persons they could not have given any other Sentence.—But Mo^r. de St. Contest was so prepossessed, that it was to no purpose to urge the point any farther; he adopted the Maxims laid down in their late Memorial on Prizes, by which, they pretend, that in Matters between Nation and Nation, as that, he said of prizes, is, the Subjects of one Nation are not bound by the Sentence of the Courts of Judicature of the other, but that Commissaries ought to be appointed by common Consent, who not agreeing, should chuse Arbitrators in another nation indifferent to both.—Our Conversation on this Affair rested here as it was needless for me to enter into that Argument which was wide of the Question.

I have the honour to be with the greatest Respect,

My Lord

Your Lordship's

most obedient, and most

humble, Servant

ALBEMARLE.

[Endorsed] Paris 29th Aug^t 1753. H. E. the E^l of Albemarle. R 1. Sept. By Turner.

104. HOLDERNESSE TO ALBEMARLE

(*S. P. For., France, vol. 248*)

Whitehall, 6th Sept^r 1753.

H. E. The Earl of Albemarle.

MY LORD,

I have received the Honor of Your Excellency's Letters of the 29th of August by Turner, & laid them immediately before The King; And His Majesty has been pleased to approve, the Manner in which You have executed His Commands, contained in my Letter of the 24th, relative to the Dispute with The King of Prussia. I have nothing new to say to Your Excellency upon that Head, but to observe, that

what Mons^r. de St. Contest proposes of It's being signified from hence to The King of Prussia's Minister, that the Negotiation between His Majesty, & the Court of France, is at an End, seems entirely useless, & indeed inconsistent with the Nature of the Application originally made to the Court of France, which was no other than to acquaint Them, that One of Their Allies having insulted the Crown of Great Britain, that offensive Proceeding might be productive of disagreeable Consequences, unless by the Interposition of the Most Christian King, His Prussian Majesty was brought to desist from His unjust Resolution, of detaining what is due to The King's Subjects; And the several Proposals which have been offered, proving unsatisfactory, there is now an End of that Transaction, so far as relates to the Court of France.

One should almost be tempted to think, by Mons^r. de St. Contest's Way of Reasoning upon this Point, that He never tho'ro'ly understood the Nature of the Question, or, that He was not informed, that Our Courts of Admiralty, as likewise the higher Court of Appeals, Act by the same Principles, & even with the same Forms, which are made use of in France; But it is now become Unnecessary to detain Your Excellency any longer upon this Subject.

I am, &c^a.,

HOLDERNESSE.

105. ALBEMARLE TO HOLDERNESSE

(*S. P. For., France*, vol. 248)

Paris, Wednesday, 12th Sept^r 1753.

MY LORD,

I have thought it unnecessary to say any thing to Mo^r. de St. Contest, upon the Subject of Your Lordship's letter of the 24th Instant,¹ judging it would be inconsistent with His Majesty's Dignity, to take any further Notice of the Negotiation, relating to the King of Prussia, after this Court had thrown it up so definitively as they have done. I may, however, assure Your Lordship, that, that Minister could not well misunderstand the Nature of the Application, originally made to his Court, in that respect, having more than once explained it to him in the most precise manner; but that he is willfully blind to every thing that does not seem to be for the honour, or Interest, of Prussia, is a thing more than probable, from his Manner of acting, on every occasion, in which the King of Prussia has been concerned.

¹ ' Ultimo ' is meant.

With respect to their Notions of Our Courts of Admiralty and Courts of Appeal, Your Lordship will have observed, that, tho' it has often been told them, that they proceed according to the Law of Nations, and the particular Treaties, yet, by their late Memorial on Prizes, they treat those Judgements as being only of the Nature of Interlocutory Judgements; and do not look upon them as final, but that the matter of them is to be deem'd an Object of Negotiation, to be determined, as often as it may be required, between Crown and Crown, Prizes being, in their Opinion, a National Concern, and not merely as between Subject and Subject; and they leave, consequently, the same Application to be made to the Forms used in France, on the like Occasions.

[*Endorsed*] Paris, 12th Sept., 1753. H. E. the E^l of Albe-
marle, & 16. Evacuations.

106. ALBEMARLE TO HOLDERNESSE

(*S. P. For., France, vol. 248*)

Fontainebleau, Tuesday, 13th Nov^r 1753.

Apart.

MY LORD,

Since my other Letters of this Date I have seen Mo^r. de St. Contest, who has told me, that Mo^r. de Mirepoix's last Dispatches inform'd him, that Your Lordship was preparing a State of the several Subjects of Complaint from Our Court, Article by Article, remaining unsatisfied, which Your Lordship was to deliver to him; from which Mo^r. de St. Contest took occasion to express their readiness at this Court to join in removing all Causes of Discontent, between the Two Courts; and to add, that nothing would remain afterwards, but to settle the Differences between His Majesty and the King of Prussia, which, he said, he should be glad to see an End to; That he thought some Expedient might be found to bring it about, and asked me whether I had received any Instructions on that subject. I told him, that I had already acquainted him with His Majesty's resolution, in which I did not know of any Alteration; that since this Court¹ had thought proper to drop the Negotiation that had been begun with them, for the Interposition of their Offices at that of Berlin, to engage His Prussian Majesty, to give the King the Satisfaction His Majesty

¹ This is a mistake of the draughtsman, who took the words 'this Court', doubtless, from a dispatch of Holdernesse's, where it would mean the English Court. See dispatches of November 29 and December 5 *infra*.

had a right to expect, I had not received any Directions whatever, and had therefore no Propositions to make him; and that if he had any to offer I could not now take upon me to receive them, but advised him to send them to Mo^r. de Mirepoix.—Mo^r. de St. Contest made me no other Answer to this than the Wishes of his Court to root up these Seeds of Dissention.

[*Endorsed*]. Fontainbleau, 13th Nov^r 1753. H. E. the El of Albemarle. Apart. R 17th By Pollock.

107. HOLDERNESSE TO ALBEMARLE

(*S. P. For., France, vol. 248*)

Whitehall, 29th Nov^r 1753.

Apart.

Earl of Albemarle.

MY LORD,

I cannot omit mentioning a Mistake, which seems to have slipped into Your Ex^cy's Letter, apart, of Nov^r 13th, wherein amongst other Things, you say, That you had acquainted Mons^r. de St. Contest 'That since *this Court* (meaning France) had thought proper to *drop* the Negotiation, that had been begun with them &c^a.' which seems to insinuate, that it was the Court of France that had dropped this Negotiation; Whereas the Case really is, That *His Majesty* not having receiv'd admissible Proposals from Them, touching the Prussian Dispute, had thought proper to desist from any farther Negotiation, and directed Your Ex^cy to acquaint Mo^r. de St. Contest with this Resolution; As this Distinction is very material, I hope Your Ex^cy will set it right, wherever the Mistake may have happen'd.

I am, &c^a.,

HOLDERNESSE.

108. ALBEMARLE TO HOLDERNESSE

(*S. P. For., France, vol. 248*)

Paris, Wednesday, 5th Dec^r 1753.

MY LORD,

It is material I should rectify the Error, which Your Lordship has observed, in my Letter Apart of the 13th of last Month in speaking of the Negotiation at this Court, relating to the Dispute with the King of Prussia. The Terms I made

use of slipp'd in by Inadvertency ; But I recollect very well that my Conversation with Mo^r. de St. Contest had not the Turn, which such Expressions would seem to give it, and therefore there is no occasion to make him any Explanation upon it, the mistake being only in my letter.

109. MICHELL TO FREDERICK

(Brit. Mus. Add. MSS. 32859, f. 154)

Copie

Au Roy de Prusse,

Au Roy seul.

P. S. À ma très humble Relation du 19 Septembre 1755. J'aurai l'Honneur de dire à V. M. en Consequence des Ordres immediats, dont Elle m'a honoré le 2. de ce Mois, que je suis persuadé, que le Ministere Anglois seroit charmé de pouvoir mettre à couvert de toute Insulte les Etats du Roy en Allemagne ; Cela gêneroit moins l'Angleterre dans Ses Operations contre la France, et Luy epargneroit probablement beaucoup ; Mais en même tems je ne saurois mander avec Precision jusqu'à quel Point cela pourroit importer à ces Gens-cy, à moins que de savoir sur quel pied une pareille Negociation pourroit avoir lieu. Si par exemple il etoit question de convenir de cette Affaire avec la France, et qu'Elle exigeat pour cet Effet des Conditions de l'Electeur, qui affectassent le Systeme du Roy d'Angleterre, les Ministres Anglois, bien loin d'en être charmés feroient au contraire tout au Monde pour en detourner Leur Maître ; Mais d'autre coté si on pouvoit trouver des Expedients pour mettre l'Electorat à couvert sans commettre le Roy d'Angleterre, je suis très fort persuadé comme je viens de le dire, qu'une pareille Negociation feroit plaisir icy. C'est là au moins tout ce que je puis en mander à V. M. en La suppliant d'être bien sûre, que je n'ouvriroy jamais la bouche à qui que ce soit, des Questions, qu'Elle m'a fait à cet egard.

Ut in humillima Relatione

MICHELL.

[*Endorsed*] Londres 19^e Sept^{re} 1755. Copie du P.S. de la Lettre de M^r Michell au Roy de Prusse. R 19th Sep^r 1755. Decyphered.

IIO. FREDERICK TO MICHELL

(Add. MSS. 32861, f. 403)

Berlin 23^e Decembre 1755.

J'ai recu Votre Rapport du 9^e. de ce Mois par lequel j'ay vu avec Satisfaction, que les Affaires Publiques sont en Angleterre encore dans les mêmes Dispositions, qu'auparavant, et que la Façon de penser des Ministres continue à cet egard. Comme ma Lettre du 7. de ce Mois vous sera parvenue au Moment present, J'espere d'avoir bientôt Votre Reponse là-dessus, et que *Je serai bientôt d'accord avec ces Gens là*: Faites Moy en au plus tôt Votre Rapport, et si Vous pensez qu'il le faille, envoyez Moy Votre Reponse par un Courier Exprés, que Vous adresserez au Sieur de Hellen à la Haye, afin qu'il me la fasse parvenir le plus tôt le mieux.

FEDERIC.

III. NEWCASTLE TO MÜNCHHAUSEN

(Add. MSS. 32861, ff. 401-2)

À Newcastle House, Le 23^{me} Dec^{re} 1755.

MON CHER MONSIEUR,

Je ne veux pas laisser partir ce Courier, avec les Nouvelles interessantes qu'Il porte, sans avoir l'Honneur de renouveler à Votre Excellence, et à Mo^r. de Steinberg, les Assurances de mes Respects inviolables ; Et sans même vous toucher un Mot sur leur Sujet.

Je regarde la Negociation presente avec Le Roi de Prusse, comme la Suite des Idées, qui nous ont été communes, et également approuvées de tous les Deux ; Et J'ose faire res-souvenir à Vôtre Ex^{ce}. combien Je les ai ardemment recom-mandées dans ma Lettre du 25^{me}. de Juillet ; Comme le Moyen le plus efficace, dans la Conjoncture presente, de pourvoir à la Sureté des Etats Allemands du Roi ; et de prevenir la Guerre sur le Continent ; — Un Objet, si desirable pour le Bien de l'Europe, et, à tous Egards, pour Le Roi.

J'espere, que Vôtre Excellence approuvera le Projet de Con-vention, lequel j'ai prié Sa Maj^{te}. de vous envoyer, pour que nous puissions avoir Vos Sentimens la dessus, avant le Retour du Courier de Berlin. Je veux bien esperer, que, loin d'y mettre aucun Obstacle, vous y joindrés Toutes les Facilités possibles.

Je connois trop le Caractere du Roy de Prusse, pour me fier entierement aux Apparences favorables ; Mais Nôtre Devoir nous oblige de mettre Sa Sincerité à l'Epreuve. En tout Cas, Je ne prevois aucun Inconvenient, si nous serons en Liberté, sur l'Entrée actuelle des Troupes Francoises dans

l'Empire, de faire de meme, de notre part, à l'Egard des Russes, ou telles autres Troupes Etrangeres qu'on jugera à propos, et qu'on sera en Etât d'appeller pour Notre Defence ; Liberté, qui doit être reciproque aux Deux Parties Contractantes.

Je ne sçauois finir, sans Vous prier de faire mes tres humbles Respects à Son Ex^{co}. Mo^r. de Steinberg, et à tous Mes Amis, et Amies à Hanovre ; Et particulierement à la Chere Melzing. La Duchesse de Newcastle vous assure tous de ses Complimens les plus sincerés.

Je vous souhaite les Complimens de la Saison ; Et suis, avec la Consideration, et la Sincerité, les plus parfaites,

Mon Cher Monsieur, &c^a

HOLLES NEWCASTLE.

[Endorsed] Copy to the President Munchhausen, Dec^r 23^d 1755, by Lamb.

112. MÜNCHHAUSEN TO NEWCASTLE

(Add. MSS. 32861, ff. 500-1)

MY LORD DUC

La gracieuse Lettre, dont Votre Excellence m'a honoré le 23^{me} m'a été rendue le 29^{me} à 8 heure du soir.

La joye qu'elle m'a causée a été d'autant plus sensible, que les nouvelles, dont elle me fait part, sont du plus desirables et importantes dans les conjunctures presentes si critiques, et qu'elle m'est d'une preuve authentique, que Votre Excellence continue, de m'accorder quelque part en l'honneur de sa bienveillance et d'une confiance aussi flatteuse que la sienne, dont l'un et l'autre est hors de tout prix auprès de moi.

Je n'aurois donc gueres pu finir plus agreablement cette année, que je ne le fais, graces aux bontés de Votre Excellence, Pour que rien ne manque à ce contentement je profite avec empressement de l'occasion que Votre Excellence me fournit, pour Lui renouveler les assurances de devotion et d'un attachement respectueux et sans reserve, que je Lui ai voué pour le reste de mes jours. J'ajoute des vœux ardens et sincerés, pour qu'il plaise à Dieu de conserver Votre Excellence en Santé et en tout ce qu'il y a de felicité pendant longues années, et qu'il veuille couronner les conseils éclairés de tout le succès et bonheur imaginable dans ce temps difficile et epineux.

Quoique le Courier n'ait pas encore delivré ses autres depeches, et que par consequent je ne sois pas encore instruit des circonstances et de la facon de la chose, dont il s'agit, My lord Holdernesse, de meme que les lettres, que j'ai eu honneur d'écrire à Votre Excellence pendant la presence du Roy, pourront me rendre temoignage, combien j'ai de lors reveré la

sage reflexion de V. E. au sujet du Plan qu'elle avoit dressé par raport au Roy de Prusse et qui est revenu a present sur le tapis, et combien, j'ai envisagé l'acquisition d'une bonne intelligence avec ce puissant Voisin, comé un coup de parti et l'expedient le plus sûr, pour couvrir les Etats du Roy en Allemagne sans depenses excessives et pour rendre à la Couronne d'Angleterre les coudees d'autant plus Franches, pour agir de la facon la plus conforme aux Interets de la Nation. Je continue d'etre de la meme opinion et je crois pouvoir garantir d'avance à V. E., une approbation universelle et particuliere-ment du Ministere d'ici dans le coup d'essai qu'Elle vient de faire.

Je n'ai pas manqué de m'acquitter des compliments, dont Votre Excellence me fait l'honneur de me charger, en particulier à Ms. de Steinberg et Madame de Meltzing. Ils ont été recus avec grande joye et reconnoissance. Votre Excellence et son souvenir étant à jamais reveré et respecté parmi nous, tous m'ont comés d'en assurer V. E. et de leur parfait devouement. Je prens la liberté de presenter mes tres humbles devoirs de memes que ma feûne, qui en fait autant à V. E., à Madame la Dutchesse, Lui souhaitant du meilleur de mon coeur une santé parfaite et toute sorte de contentement. Nous vous supplions, de nous conserver l'un et l'autre l'honneur de vos bonnes graces. Votre Excellence peut compter, qu'elle ne peut être davantage honorée et respectée, qu'elle l'est, et le sera à jamais, de

My lord Duc

De Votre Excellence

le tres humble, tres obeissant et tres devoué serviteur
MÜNCHHAUSEN

Hannovre

ce 30 Decembre 1755

[Endorsed] R Jan^r 6th by Lambe.

113. MÜNCHHAUSEN TO NEWCASTLE

(Add. MSS. 32861, ff. 498-9)

MY LORD DUC,

En lisant le Plan de Convention, j'ai donné mille et mille benedictions à Votre Excellence, tant je l'ai trouvé bien, prudemment et solidement concu, et tant il m'a paru digne d'admiration qu'au milieu de grandes importantes affaires, que Votre Excellence a dessus les bras, Elle a tant pu s'occuper de notre sureté et des moiens de conserver à notre petit coin la paix et la tranquillité.

Le Roy aiant ordonné, qu'après que nous nous fussions concertés sur le plan en qi [question], nous devons expedier et

faire repartir le courier sur le champs et sans aucun delai nous avons fait tant de diligence, que le dit Courier repartira demain de bonne heure. Je puis donc dire avec verité que tous mes Collegues de meme que moi ont etè penetrès de satisfaction et d'admiration sur tout ce que Votre Excellence à projecttè. Ms. de Steinberg, surtout m'a bien chargè d'en assurer Votre Excellence en lui presentant ses respects. Comme nous avons trouvè le Plane dressè avec une si grande circumspection tant de prudence et solidité qu'il n'y a rien à retrancher, n'y à ajouter selon nos petits lumieres nous faisons comè je viens de le dire, repartir le Courir sur le champ, pour qu'il porte aux pieds du Roy nos humbles remercimens de ses soins Paternels, et si gracieux pour ce Païs ci, et assurer Sa Majestè, que nous ne pourrions rien imaginer de plus propre, pour pourvoir à notre suretè, que ce que contient l'Ecrit, dont Sa Majestè nous a fait faire part.

Dieu veuille, que le Roy de Prusse y donne les mains de bonne foi. L'on ne peut sans doute jamais etre entierement sure de son fait avec ce Prince, mais ce qui augmente mes esperances par raport à cette negociation, c'est qu'outre des raisons qui regardent le propre Interet du Roy de Prusse, et qui proviennent des sages mesures qu'on a pris en Angleterre, c'est, que le Duc de Bronsvic en se servant du canal de son Frere le Prince Ferdinand, qui est bien intentionnè remue Ciel et Terre, pour inspirer de meilleures dispositions au Roy de Prusse et que je scais de bonne part, que Dieu a beni dejà les mouvements, que sa devotion pour le Roy lui fait prendre pour faire beaucoup d'impression sur l'esprit de notre redoutable Voisin.

Je suis avec un attachement respectueux et tres sincere

My lord Duc

De Votre Excellence

le tres humble et tres obeissant Serviteur,

MÜNCHHAUSEN.

Hannovre

ce 30 Decembre 1755.

[Endorsed] & Jan^r 6th by Lambe.

114. HOLDERNESSE TO SIR CHARLES HANBURY WILLIAMS

(Add. MSS. 32861, ff. 441-5)

Whitehall, December 26th, 1755.

Copy.—*Most Secret.*

SIR,

The Subject of this Letter being of the greatest Importance to the King's Service, I should wish to introduce it in such a Manner, as to draw your most serious Attention to the

Contents of it ; And, tho' I shall, as far as possible, acquaint You minutely with The King's Thoughts and Intentions, some Latitude must necessarily be left to Your Excellency's own Judgement and Prudence, which, The King is persuaded, You will exert to the utmost, in so critical a Conjunction.

The Rise and Progress of the Treaty, You have lately signed at Petersburg, is so well known to You, by the Dispatches already in your Hands, that it is unnecessary to enter into farther Details ; and You will soon recollect, what gave Rise to the first Orders, Colonel Guy Dickens received, upon that Subject ; and that the Project, sent to him, was calculated chiefly to obviate the Consequences of what was, then, to be apprehended from The King of Prussia ; in case the Differences, which had arose between The King and That Prince, had been pushed to Extremity—Soon afterwards, indeed, Points of much greater Consequence (I mean the American Dispute with France) arose ; and, as the Object became greater, the Subsidy to the Russians was enlarged ; but the view was still the same ; That of preserving the general Peace of Europe. It was in that Manner, and upon that Supposition, that the Measure was defended by The King's Servants in Parliament ; And it was with that view, likewise, that His Majesty ordered me, to communicate the Treaty, (which could not have long remained secret, as the Printing of it was thought advisable,) to the Prussian Minister, the same Day, that It was laid before both Houses ; when I, also, acquainted Him, by The King's Command, that this Treaty was, by no means, meant as an offensive, or a hostile Measure against His Prussian Majesty ; but principally intended, to secure such an Alliance, as might shew other Powers, That The King would not be attacked, with Impunity, in any Part of the World. I need not hide, from You, that the Austrian Minister, here, has taken Umbrage at the Publick Declarations, made by the King's Servants, in the Debate, which arose in Parliament, upon the Treaty with Russia. They suspect a Predilection for The King of Prussia ; and insinuate an Alteration of Measures in England ; with no other Foundation, than because The King has not willingly suffered The King of Prussia to be forced into hostile Measures, (perhaps contrary to his present Intention) by France, at a Time, when no other Power in Europe, besides England and France, is directly interested in the *Démêlées* which subsist ; And when a Refusal, on the Part of the Court of Berlin, to enter into the French System, may be the Means of preserving that Peace in Europe, which is, at all times, so desirable, and, now, so necessary.

Thus far, perhaps, it may not be improper for You to drop, in a cursory Manner, to the Russian Ministers ; in order to

sound them, how far the Court of Vienna may have endeavoured to mislead them, by reasoning upon Faintoms of their own Imagination, and without any real Knowledge of the Truth of what is going on. But, for your own private Information, I have The King's Leave to inform You of a Fact, of the utmost Importance, and which requires the strictest Secrecy ; It is to acquaint You, that, in consequence of what passed between Monsieur Michell and Myself, He has received Orders, from his Court, to acquaint Me, ' That The King, his Master, was much pleased with the Communication, which had been made to Him, of the Russian Treaty, and with the Sentiments, expressed by The King, upon this Occasion ; That, inclining to preserve the Peace of Europe in general, He is desirous to begin with securing That of Germany ; and thinks, that this End may be best obtained by a Treaty of Neutrality for the Empire during the present Troubles ; drawn up in such a Manner, as not to give offence to any other Power ; And Monsieur Michell proceeded to chalk out a Method, for accommodating the Differences, which have arisen between His Majesty and the King of Prussia.'

Finding His Prussian Majesty in this Disposition, The King has thought proper to direct me, to prepare the Project of a Convention, conformable to what has been proposed by the Prussian Minister ; a Copy of which I enclose for your Information, and which needs no Comment or Explanation. If the King of Prussia is sincere, the Peace of Germany, may, undoubtedly, be maintained ; as it cannot be imagined, that France will venture to march an Army into the Empire, if the King of Prussia is seriously determined to oppose it. But, if (which is not to be supposed) The King of Prussia should have some sinister Meaning in the Overtures He has made ; Endeavours may possibly be used, even by Himself, to instil Jealousies at Petersburg, as if We were neglecting the Russian Alliance, and entering into secret Measures for defeating It. The very contrary is the Case. The King knows, that the Conclusion of the Treaty with The Empress of Russia is one great Inducement to The King of Prussia's present Way of Thinking ; And His Majesty is persuaded, That The Czarina's known Magnanimity will be equally satisfied with having greatly contributed to procure Peace and Security to Her Allies *par un Coup de Plume*, as if She had had an opportunity of shewing the Bravery of Her Troops, and the Greatness of Her Power in Arms. Her Grandeur and Attachment to Her Allies is equally, perhaps more eminently shewn, by procuring Peace without Bloodshed, than by the most fortunate Success of Her Armies.

But here, Sir, consists the delicate Part of your Commission.

It is The King's Intention, that You should keep the Whole of this nice Transaction, an absolute Secret, even from the Great Chancellor Himself ; unless You should have the greatest Reason to think, The King of Prussia should have been beforehand, and either unfolded the Mystery, or endeavoured to graft Insinuations upon It, that the Measure is repugnant to that thorough Confidence, and close Alliance, which It is His Majesty's most sincere Intention to preserve with The Empress of Russia. And I must yet add another Caution, that You should not be led to make a Communication of this important Nature, even though the Austrian Minister should use His Endeavours to raise Suspicion or Uneasiness at Petersburg, upon the Measures, which The King finds it necessary to take, in order to preserve the Peace and Tranquility of the Empire, which the Court of Vienna Themselves have but too much neglected.

Were You less acquainted with the Way of acting of that Court, upon many Occasions, I should think it incumbent on me to expatiate a little more upon their late Proceedings ; but knowing them so well as You do, I need only acquaint You with some Facts, and with The King's Pleasure, as to the Use, You are permitted to make of Them ; And your Surprize will, then, soon cease at the Apprehension, I have shewn, that the Austrian Ministers might be instructed to do ill Offices to The King's Service at Petersburg. To this End, I have The King's Leave, to send You, in the utmost Confidence, a Series of Correspondence between Mr. Keith and Me, from the Middle of April last to the End of July. And, in reading them over, I must beg your Excellency to recollect the known Circumstances of Europe, at the particular Dates of each Letter ; as, likewise, the Progress of the Negotiation with Monsieur de Mirepoix, the Documents of which are in Your Hands ; And You will, then, be able to set The King's Conduct, towards the Court of Vienna, in It's true Light ; and to shew the Return, which It has met with.—But, as it is by no means The King's Intention, either to complain of, or to resent the Behaviour of the Court of Vienna, Your Excellency will be careful to make no other Use of these Papers, than to justify His Majesty's Proceedings, in case unjust and false Surmises should make it necessary for You to speak out, and to shew, how backward the Court of Vienna has been, in every Thing, that regards His Majesty's Interest. In short the Whole of this Dispatch is meant, to put Arms into your Hands, to obstruct the bad Effect of any Insinuations, which may be made, to the Detriment of His Majesty's Interest, and Views, at the Court of Russia. The King hopes, however, you will have no Necessity to make Use of Them.—In that case, the

less there is said, the better ; And, at all Events, no harsh Expression should slip from You, however You may be provoked by the Conduct of any Court, that may be interested or concerned in the Contents of this Dispatch.

I am, &c.,

[*Endorsed*]. (By Major.)

HOLDERNESSE.

115. CONVENTION OF WESTMINSTER, JANUARY 16, 1756

(*S. P. For., Treaties, &c., No. 421*)

Convention between Great Britain and Prussia,
Westminster, 16th Jan^{ry} 1756.

Separate and Secret Articles.

Declaration of the Prussian Minister.

D'Autant que les Differends, qui se sont elevés en Amerique entre Le Roi de la Grande Bretagne et Le Roi Très Chretien, et dont les Suites deviennent de plus en plus critiques, donnent lieu de craindre pour la Tranquillité Publique en Europe ; Sa Majesté Le Roi de la Grande Bretagne, Electeur de Bronsvic Lunebourg, &c., Et Sa Majesté Le Roi de Prusse, Electeur de Brandebourg, &c., attentives à un Objet si interessant, et egalemeut animés du Desir de conserver la Paix Generale de l'Europe, et Celle de l'Allemagne en particulier, ont bien voulu se concerter sur les Mesures, qui puissent contribuer le plus efficacement à une Fin si desirable ; Et pour cet Effet Elles ont autorisé Leurs Ministres Plenipotenciaires respectifs, Savoir, au Nom et de la Part de Sa Majesté Britanique, Ses Conseillers Privés, Philippe Comte de Hardwicke, Son Chancelier de la Grande Bretagne, Jean Comte Granville, President de Son Conseil, Thomas Holles Duc de Newcastle, Premier Commissaire de Sa Tresorerie, Robert Comte de Holdernesse, L'un de Ses Principaux Secretaires d'Etat, et Henry Fox, un autre de ses Principaux Secretaires d'Etat ; Et au Nom et de la Part de Sa Majesté Prussienne Le Sieur Louis Michell, Son Chargé d'Affaires à la Cour de Sa Majesté Britannique ; Lesquels, après s'etre communiqué reciproquement Leurs Pleinpouvoirs, sont convenus des Articles suivans.

Article 1.

Il y aura entre Les dits Serenissimes Rois une Paix sincere et une Amitié reciproque, nonobstant les Troubles qui pourront s'elever en Europe, en consequence des Differends susmentionnés ; en suite de laquelle aucune des Parties Contractantes n'attaquera, ni n'envahira directement ni indirectement le Territoire de l'autre ; mais au contraire Elles feront chacune de son coté Tous Leurs Efforts pour empêcher Leurs Alliés respectifs, de rien entreprendre contre le dit Territoire, de quelque maniere que ce puisse être.

Article 2.

En cas que contre toute Attente, et en Violation de la Tranquillité que Les Hautes Parties Contractantes entendent maintenir par ce Traité dans l'Allemagne, quelque Puissance Etrangere fit entrer des Troupes dans la dite Allemagne sous quelque Pretexte que ce puisse être, Les Deux Hauts Contractants uniront Leurs Forces, pour s'opposer à l'Entrée ou au Passage de telles Troupes Etrangeres, et à cette Infraction de la Paix, et pour maintenir la Tranquillité en Allemagne selon l'Objet du present Traité.

Article 3.

Les Hautes Parties Contractantes renouvellent expressément Touts les Traités d'Alliance et de Garantie, qui subsistent actuellement entre Elles, et nommément l'Alliance Defensive et de Garantie reciproque, concluë à Westminster entre Leurs Majestés Britannique et Prussienne, le 18^{me} de Novembre 1742, La Convention arretée entre Leurs dites Majestés à Hannovre le 26^{me} Août 1745, et l'Acte d'Acceptation de Sa Majesté Prussienne de Celui de Garantie de Sa Majesté Britannique du 13^{me} d'Octobre 1746.

Article 4.

Le Present Traité sera ratifié par Sa Majesté le Roi de la Grande Bretagne, et par Sa Majesté le Roi de Prusse, et Les Lettres de Ratification en bonne Forme seront delivrées, de part et d'autre, dans le Tems d'un Mois, ou plutôt si faire se peut, à compter du Jour de la Signature du present Traité.

En Foy de quoi, Nous Soussignés, munis des Pleinpouvoirs de Leurs Majestés Les Roys de la Grande Bretagne et de Prusse, avons en Leurs Noms, signé le present Traité, et y avons apposé Les Cachets de Nos Armes. Fait à Westminster, Le Seizième Jour de Janvier, l'An de Grace 1756.

(L.S.) HARDWICKE C.

(L.S.) GRANVILLE P.

(L.S.) HOLLES NEWCASTLE

(L.S.) HOLDERNESSE

(L.S.) H. FOX.

Article Secret et Separé.

Comme la Convention de Neutralité, signée en Date d'Aujourd'hui par les Ministres de Sa Majesté Le Roy de La Grande Bretagne, et de Sa Majesté Le Roy de Prusse munis de Plein-pouvoirs necessaires pour cet Effet ne regarde que l'Allemagne Cette Convention ne doit point être étenduë aux Païs-Bas Autrichiens et Leurs Dependances, qui ne doivent point être censés compris dans la presente Convention de Neutralité, sous quelque Pretexte que cela puisse être, d'autant plus que Sa Majesté Le Roy de Prusse n'a garanti, dans le Huitieme Article de la Paix de Dresde, à Sa Majesté L'Imperatrice Reine de Hongrie, et de Bohême, que les Etats, qu'Elle possede en Allemagne.

Cet Article Secret et Separé aura la même Force, que s'il etoit inseré, de Mot à Mot, dans la presente Convention de Neutralité, signée Aujourd'hui ; Et les Ratifications en seront echangées dans le même Têms que celles de la dite Convention.

En Foy de quoi, Nous soussignés munis de Pleinpouvoirs de Leur Majestés Les Rois de La Grande Bretagne et de Prusse, avons, en Leurs Noms, signé le present Article Secret et Separé, et y avons apposé les Cachets de Nos Armes. Fait à Westminster, le Seizième Jour de Janvier, L'An de Grace 1756.

(L.S.) HARDWICKE C.
 (L.S.) GRANVILLE P.
 (L.S.) HOLLES NEWCASTLE
 (L.S.) HOLDERNESSE
 (L.S.) H. FOX

116. DECLARATION, JANUARY 16, 1756

Afin de terminer les Differends, qui peuvent s'être élevés entre Leurs Majestés Prussienne et Britannique, Il est déclaré, Que, dèsque Sa Majesté Prussienne levera l'Arrêt mis sur la Dette de la Silesie, et fera payer, aux Sujets de Sa Majesté Britannique, ce qui Leur en reste dû, selon le Contrat Original, tant Interets que Principal ; Sa Majesté Britannique promet et s'engage, de Son Coté, de faire payer à Sa Majesté Prus-

sienne la Somme de Vingt Mille Livres Sterlin, en Extinction de toute Pretension de Sa dite Majesté ou de Ses Sujets à la Charge de Sa Majesté Britannique, sous quelque Pretexte que ce puisse être. Fait à Westminster le Seizième Jour de Janvier, L'An de Grace 1756.

(L.S.) LOUIS MICHELL.¹

II7. EXTRAIT DES LETTRES DE LONDRES DU 20
& DU 23 JANVIER

Il se tint le 16. au soir un grand Conseil à St. James, dans lequel on signa un Traité, conclu entre cette Cour & celle de Berlin. Ce coup est aussi imprévu, qu'il est frappant pour la France. On assure, que le Traité de Westmunster, par lequel la Maison de Brandebourg garantit la Succession au Trône de la Grande-Bretagne à l'Illustre Maison de Hanover, y est renouvelé, & tous les Traités postérieures confirmés ; Que le Roi, notre Souverain, renonce à toutes ses prétensions sur l'Ost-Frise ; Que le Roi de Prusse consent au remboursement du restant du Capital & de l'Intérêt de l'Hypothèque sur la Silésie, & à entrer dans les vues de Sa Maj. Britanique par rapport au maintien de la tranquillité dans l'Empire, en s'opposant à l'entrée des Troupes étrangères ; Que Sa Maj. Prussienne garantit l'electorat de Hanover ; Et que Sa Maj. Britanique renouvelle sa garantie de la Silésie.

Cette heureuse réconciliation pourra être d'un grand effet. Il y a déjà même des gens, qui prétendent, qu'on va travailler à Berlin, sous les yeux du Roi de Prusse, à l'Accommodement des différends entre cette Cour & celle de France : Quoiqu'il en soit, la nôtre a encore reçu cette semaine un Paquet du Ministère de Versailles ; Mais on l'a renvoyé sans aucune réponse, & même sans l'avoir décacheté. Il est certain, que cette nouvelle Alliance nous rendra plus fermes, sur-tout s'il est vrai, comme on le dit, qu'une autre Puissance a déclaré, qu'au cas que les Etats de la Grande Bretagne fussent attaqués, Elle ne pourroit se dispenser de les défendre de toutes ses forces.

Gazette de Leyde, no. 8,
Tuesday, 27 January 1756.

¹ The copy which Michell received and sent to Berlin was signed 'Hardwicke, Ch. Granville, P. Holles Newcastle. Holderness. H. Fox.' *Pol. Cor.* xii. 54.

118. INADEQUATE OR ERRONEOUS ACCOUNTS
BY VARIOUS WRITERS

1. *Gentleman's Magazine*.

a. Aug. 9, 1734. 'His Majesty sign'd a License for any of his Subjects to lend the Emperor 300,000*l.* at 6 *per Cent*, on the Security of the Silver Mines in *Silesia*.'

See App. 1, from which it appears that the license does not mention any specific security, nor the rate of interest at which the money was to be lent.

App. 2 shows that the security was 'a mortgage of the Emperor's Revenues in the Dutchy of *Silesia*, and also the said Emperor's Bond with the Security of the States of *Silesia*'.

b. June 1, 1748 reports that the complaints made by the K. of *Prussia*'s minister were determined by the high court of admiralty entirely to the satisfaction of his *Prussian Majesty*; and a treaty of commerce set on foot between *England* and the ports of *Prussia*.

There is no foundation for the former of these statements. No trace of negotiations for a treaty of commerce is to be found earlier than in the negotiations for the neutralization of Germany towards the end of 1755.

c. Vol. xxiii, p. 54 (Jan. 1753). 'In 1738 [*sic*] the Emperor *Charles VI.* borrowed of certain persons in *England* with His *Britannic* majesty's permission 250,000*l.* at 6 *per Cent.* and mortgaged the silver mines in *Silesia* for the repayment of it. By the treaty of *Breslau* in 1742, the Q. of *Hungary*, then empress, yielded up *Silesia* including the silver mines, to the K. of *Prussia*, who thereupon engaged to repay to the *English* the sums secured by the mortgage. This treaty was guarantied by his *Britannic* majesty. There is now a considerable part of this loan in the K. of *Prussia*'s hands, and he has instead of paying it to us, stopped it to make good the losses which his own subjects have sustained during the late war, by our seizing their ships, tho' they were afterwards released. The pamphlet¹ is intended to prove that by this application the K. of *Prussia* has not violated the treaties [*sic*] of *Breslau*, and consequently that the guarantee of the K. of G. B. and that of *England* which it includes remains intire; a guarantee of which the K. of *Prussia* says he well knows how to assert effectually, if occasion should offer, and shall think himself disengaged from his guaranteees,

¹ Among the notices of books and pamphlets on the same page is a brief notice of the *Exposition of the Motives, &c.*, recently published in English.

with regard to the reigning family in *England*, and the electoral states of *Hanover*. A list of the ships taken and detained is added.'

There are other notices in the same work of the remittance of 500,000 crowns (June 23, 1743) and £88,000 (Nov. 16, 1750) on account of the loan, of a meeting of the proprietors at which it was resolved that application should be made to the King of Prussia for immediate payment of the loan and all arrears of interest (February 9, 1749), of the rejection of proposals for payment of arrears of interest at 7 per cent., on condition of their accepting 3½ per cent. for the future (October 18, 1749), of the publication of Newcastle's reply to Michell and the Report of the Law Officers (vol. xxiii, p. 83 et seq.) and of Michell's notice to Holdernessee that the remainder of the principal and interest would be paid in a few days (xxvi, June 15, 1756).

2. *Continuation of the Complete History of England*, by T. Smollett, M.D., vol. i (or vol. xii), p. 130. 'At this juncture his Prussian majesty made no scruple of expressing his resentment against the court of London, which he seemed to consider as an officious cabal, that had no right to intermeddle in the affairs of Germany. His resident at London complained to the British ministry, that divers ships, sailing under the Prussian flag, had been stopped at sea, and even seized by English cruisers; and that his subjects had been ill-treated and oppressed; he therefore demanded reparation in a peremptory tone; and, in the mean time, discontinued the payment of the Silesian loan, which he had charged himself with by an article in the treaty of Breslau. This was a sum of money amounting to two hundred and fifty thousand pounds, which the emperor Charles VI. father of the reigning empress, had borrowed of the subjects of Great Britain, on condition of paying an interest of six per centum, and mortgaging the silver mines of Silesia for the repayment of the principal. These devolved to the king of Prussia with this incumbrance, and he continued to pay the interest punctually till this juncture, when the payment was stopped; and he published a paper, intituled, An Exposition of the Motives which influenced his Conduct on this Occasion. . . . The Exposition and Memorial were subjected to the examination of the ablest civilians in England, who refuted every article of the charge with equal precision and perspicuity. . . . Whether his Prussian majesty was convinced by these reasons, and desisted from principle, or he thought proper to give up his claim upon other political considerations; certain it is, he no longer insisted upon satisfaction, but ordered the payments of the Silesia loan to be continued without further

interruption : a report, indeed, was circulated, that advantage had been taken of the demur by a certain prince, who employed his agents to buy up great part of the loan at a considerable discount.'

p. 302 [after giving an account of the treaty of Westminster of January 16, 1756, the author continues] : ' Their majesties, moreover, seized this favourable opportunity to adjust the differences that had subsisted between them, in relation to the remainder of the Silesia loan due to the subjects of his Britannic majesty, and the indemnification claimed by the subjects of his Prussian majesty for their losses by sea during the late war ; so that the attachment laid on the said debt was agreed to be taken off, as soon as the ratification of this treaty should be exchanged.'

It is evident that Smollett had before him an English translation of the memorial presented by Michell, and of the *Exposition des Motifs, &c.*, which Michell doubtless had arranged to have published in London. The erroneous statements as to the rate of interest and that the money was lent on the security of the silver mines doubtless were derived from the *Gentleman's Magazine*. The statement that after the presentation of the English reply Frederick no longer insisted on satisfaction, but ordered the payments on account of the loan to be continued without further interruption, is altogether incorrect, and indeed is in contradiction with Smollett's own statement that the attachment was taken off on the occasion of the exchange of ratifications of the treaty of Westminster in 1756.

The insinuation that Frederick had taken advantage of the fall in price of the bonds caused by the attachment he had laid on the last £45,000 of principal finds its only justification, as far as we know, in the fact that in 1743 he had purchased 500,000 thalers worth. See his letter of January 28, 1749, to Klinggräff, in which he says : ' J'ai fait acheter pour moi, il y a six ans, déjà pour la somme de 500,000 écus des obligations de ce fonds, ce dont le sieur Michell vous pourra donner des éclaircissements ultérieurs ' (*Pol. Cor.* vi. 357). Probably this was not done in his own name. The only other allusion to this, or any similar transaction, if indeed there had been one, is in Frederick's instructions to Boden, of April 2, 1756, to arrange for the remittance to England of what still remained due after deduction of the £20,000 he was to receive ; where he writes : ' Dabei Ihr ohnvergessen sein sollet, den Umstand wegen dererjenigen Obligationen, so Ich vor *einigen Jahren* bereits in Engelland vor Meine Rechnung kaufen lassen, mit in Consideration zu nehmen und zu attendiren, ob und was Mir deshalb an

Interessen, die Ich zu 7 Procent bezahle, competiren könne und müsse.' Possibly in 1743 the bonds had fallen on the market, and it would have been nobler on his part to pay them off in full, rather than make a profit by buying them in. Half a million thalers would be the equivalent of about £80,000.

3. *A Treatise of the Relative Rights and Duties of Belligerent and Neutral Powers in Maritime Affairs*: by Robert Ward, Esq., 1801.

P. 71. 'The Courts of Admiralty in this country having, it seems, borne hard upon his [i. e. King Frederick's] subjects for bad conduct under their profession of Neutrality, he chose himself to try the matter over again by a Court of his own; and, as might be expected, that Court having discovered that his subjects were in the right, he proceeded to carry its sentence into execution, by immediately, and of his own authority in the manner of reprisals, cancelling the large debt of his new conquest of Silesia to the merchants of England, until the claims of his own subjects were satisfied. . . . At that time there were at the Court of London four illustrious men, learned in the laws of their country and of the world, of great integrity of life and faithfulness in all matters of representation. One of them was a judge of the realm in all matters of civil and public law, the rest the highest law-officers of the Crown. . . . The answer which these learned men gave to all the propositions laid down by the Prussian Minister, is so well known to England, and so widely disseminated in Europe, that it is needless to repeat it. . . . the Duke of Newcastle's letter, containing the answer to the Prussian Minister, was then considered, and will, I trust, ever be considered by dispassionate and disinterested persons, as a masterpiece of true and general law. Thus, at least it was held by the greatest men of that time. Vattel, in speaking of the jurisdiction of Courts in the countries which erect them, observes, that for another country to set aside their definitive sentence, is to attack the jurisdiction itself; on which account no prince ought to interpose in the causes of his subjects when in foreign countries, adding, by way of further proof, "la Cour d'Angleterre a établi cette maxime avec beaucoup d'évidence à l'occasion des vaisseaux Prussiens saisis et déclarés de bonne prise pendant la dernière guerre". And in the note upon this passage, he calls it, "Un excellent morceau de Droit de Gens." To this testimony of Vattel,¹ we may add, in another country, that of Montesquieu, who, speaking of it in a private manner, as a mere literary man, in one of his familiar letters, says, it

¹ Fuller citations from Vattel and Montesquieu will be found further on in the foot-notes to No. 8 of this appendix.

is considered as "*Reponse sans replique*". There are, however, still stronger and irrefragable proofs of its general merit, its soundness of doctrine, and cogency of conclusion, in the conduct of Frederick II himself. We have seen that his own minister at the Court of London had abandoned it as far as the principle immediately before us was concerned;¹ and this probably, together with the force and weight of the answer in the minds of the different public men of Europe, induced him not to renew the subject. Certain it is, that not only these pretensions were never afterwards heard of, as founded in principle, until the Armed Neutrality of 1780; but the King of Prussia gave the most convincing proofs of conviction, by relinquishing the immediate pretensions for which he had directed the *Exposition des Motifs* to be prepared. The interest of the Silesian loan was no longer withheld, but from that time regularly discharged.

It is very evident that Ward, like Smollett, had the *Exposition des Motifs* and the Report of the Law Officers of the Crown before him when he wrote, and that he derived the erroneous statement that the interest of the loan was from that time forward regularly discharged, from Smollett. The words 'Certain it is' in both accounts can hardly be due to a mere coincidence.

4. *Commentaries on the Law of Nations*, by William Oke Manning, 1839 (p. 226), new edition revised by Sheldon Amos, 1875 (p. 293).

This work contains the fullest account of the controversy hitherto published in the English language. On only two points can any want of exactness be alleged. 1st. The phrase 'whether he would be justified in withholding the money due to the British on the Silesian Loan' might lead to the inference that the whole was still due, whereas the portion of principal then remaining unpaid, i.e. on November 22, 1751,² when the instructions to appoint the Commission were issued, was £90,000, of which one-half was paid off in December of that year. 2nd. The passage 'Reparation was, in fact, ultimately made, four years after the discussion had commenced, by the British Government agreeing, by the Treaty of Westminster, in 1756, to pay £20,000 in liquidation of all claims from Prussian subjects; the King of Prussia agreeing, on his part, to fulfil his engagements with regard to the Silesian loan' suggests that the payment was made in virtue of a stipulation contained in the treaty referred to. Whereas the matter was not alluded to in the treaty, but was made the subject of

¹ i.e. that the flag covers the goods. The reference is to Andrié's letter of May 29/June 9, 1747, quoted in the Report of the Law Officers.

² *Pol. Cor.* viii. 536.

a separate written declaration, though exchanged on the same day.

5. J. Reddie : *Researches, Historical and Critical, in Maritime International Law*, vol. i, 1844, p. 264.

'Towards the close of the first half of the 18th Century, several of the most important questions of the Maritime law of nations, underwent considerable discussion, and consequently, elucidation, in the dispute between Great Britain and the king of Prussia, relative to the threatened retention by the latter of the Silesian loan, due to British subjects, in satisfaction of damages alleged to have been sustained by Prussian subjects through the seizure and detention of Prussian vessels and cargoes by British cruizers. The dispute was ultimately settled by the payment of the balance of the loan remaining due, principal and interest, and by the subsequent release of most of the captured vessels.'

There is here no mention of the alleged Prussian cargoes captured in other than Prussian neutral ships, which are enumerated in List B, nor of the payment of £20,000 in satisfaction of ' toute prétension de Sa dite Majesté ou de ses sujets à la charge de Sa Majesté Britannique, sous quelque prétexte que ce puisse être '. The release of the Prussian ships was not *subsequent* to the payment of the balance of the loan which was made in 1756 ; they had all been released before the end of 1748, see list A, App. 34.

6. *Law of Contraband of War, with a selection of Cases from the papers of the Right Hon. Sir Geo. Lee, LL.D.*, by Frederic Thomas Pratt, D.C.L., 1856.

A foot-note to the preface states that ' in the year 1738 the sum of 250,000*l.* had been borrowed by the Emperor Charles VI of English subjects, and certain mines in Silesia mortgaged for its repayment '. Derived from the *Gentleman's Magazine*, vol. xxiii. p. 54, but incorrect as to the date of the loan and the mention of silver mines. Otherwise, the summary given is correct.

7. Carlyle : *History of Friedrich II of Prussia, called Frederick the Great*, 1865, iv. 465 (1st edition).

' To winnow the strictly true out of which, from the half-true or not provable, his Prussian Majesty has appointed a " Commission ", fit people, and under strict charges, I can believe. Commission takes (to Friedrich's own knowledge) a great deal of pains ;—and it does not want for clean corn after all its winnowing. Plenty of facts, which can be insisted on as indisputable. " Such and such Merchant Ships " (Schedules of them given in, with every particular, time, name, cargo, value) " have been laid hold of on the Ocean Highway, and carried into English ports ; *out* of which his Prussian

Majesty has, in all friendliness, to beg that they be now redelivered, and justice done." "Contraband of War," answer the English; "Sorry to have given your Majesty the least uneasiness; but they were carrying—." "No, pardon me, nothing contraband discoverable in them;" and hands in his verified Schedules with perfectly polite, but more and more serious request, That the said ships be restored, and damages accounted for. "Our Prize Courts have sat on every ship of them" eagerly shrieks Newcastle all along: "What can we do!" "Nay, a Special Commission shall now" (1751, date not worth seeking further)—"Special Commission shall now sit, till his Prussian Majesty get every satisfaction in the world!"

'English Special Commission, counterpart to that Prussian one (which is in vacation by this time) sits accordingly: but is very slow; reports for a long while nothing, except, "Oh give us time!" and reports, in the end, nothing in the least satisfactory. "Prize Courts? Special Commission?" thinks Friedrich: "I must have my ships back!" And, after a great many months, Friedrich, weary of giving time, instructs Michell to signify, in proper form ("23rd November 1752"), "That the Law's delay seemed to be considerable in England; that till the fulness of time did come, and right were done his poor people, he, Friedrich himself, would hopefully wait; but now at last must, provisionally, pay his poor people their damages; would, accordingly, from the 23rd day of April next, cease the usual payment to English Bondholders on their Silesian Bonds; and would henceforth pay no portion farther of that Debt, principal or interest"' (about £250,000 now owing), "'but proceed to indemnify his own people, to the just length, —and deposit the remainder in Bank, till Britannic Majesty and Prussian could *unite* in ordering payment of it; which one trusts may be soon!"'

This account of the matter is extremely confused. The only Schedule of ships that was ever given in by the Prussian Government was attached to the *Exposition des Motifs, &c.*, delivered on the 13th December, 1752. It is, however, the fact that from time to time Michell had complained with respect to certain ships, as recounted *supra*, p. 14. No English Special Commission ever sat. The reply to the Prussian pro-memorîa and *Exposition des Motifs* was delivered to Michell on February 8, 1753, and it cannot be said that any undue delay had elapsed since the presentation of the Prussian Case. All the Prussian ships had been released before the end of 1748, so that the thought attributed to Frederick (after 1751), 'I must have my ships back', can but be a pure invention of Carlyle's. Where the date of April 23rd is derived from is difficult to say. In the pro-memorîa delivered on 23 Novem-

ber 1752 three months is accorded to the English officers or owners of privateers to appeal against the decisions of the Prussian Commission, but that period would expire on February 23rd. Carlyle is in error in saying that 'about 250,000 [was] now owing'. As shown above, the amount of principal remaining unpaid was £45,000.

8. *International Law*: by Henry Sumner Maine, K.C.S.I., 1888, p. 203.

'The history of it is as follows: A loan of £80,000 had been advanced by subjects of Great Britain to the Emperor Charles VI on the security of the Duchy of Silesia. Silesia, in course of time, was transferred to Prussia by virtue of the Treaties of Breslau and Dresden, and in consideration of this cession Prussia was to discharge the debt. The King of Prussia, however, attached, i. e. took into his own hands, the debt by way of reprisals, but this by the terms of the treaty he had no power to do. He professed himself to be aggrieved by the decision of certain English prize courts in respect of acts of vessels belonging to his subjects, and refused to pay the British subjects the interest which he had pledged himself to pay. The English Secretary of State at once addressed to him, for Prussia was a friendly Power at the time, a letter dated February 8, 1753, in which he dwells upon the unprecedented nature of the proceeding, and states that he has the King's orders to send to the King of Prussia a report made to His Majesty by Sir George Lee, Judge of the Prerogative Court; Dr. Paul, his Majesty's Advocate-General; Sir Dudley Ryder, and Mr. Murray—the Mr. Murray who afterwards became Lord Mansfield. The report in question is one of which British lawyers and the British Foreign Office have always been exceedingly proud. It is praised by two great foreign authorities of the time—Vattel¹ and Montesquieu;² they both of them speak of it as admirable; it is, in fact, a most excellent example of the method of reasoning of which International Law admits; and

¹ 'Le prince ne doit donc intervenir dans les causes de ses sujets en pays étranger et leur accorder sa protection, que dans les cas d'un déni de justice, ou d'une injustice évidente et palpable, ou d'une violation manifeste des règles et des formes, ou enfin d'une distinction odieuse, faite au préjudice de ses sujets, ou des étrangers en général. La Cour d'Angleterre a établi cette maxime avec beaucoup d'évidence, à l'occasion des vaisseaux prussiens saisis et déclarés de bonne prise pendant la dernière guerre: Ce qui soit dit sans toucher au mérite de la cause particulière, en tant qu'il dépend des faits.' (Vattel, *Le Droit des Gens*, 1758, vol. i, p. 317.)

² 'Nous lisons ici la réponse du roi d'Angleterre au roi de Prusse, et elle passe, dans ce pays-ci, pour une réponse sans réplique. Vous qui êtes docteur dans le droit des gens, vous jugerez cette question dans votre particulier' (Letter of March 5, 1753, to the Abbé Comte de Guasco, *Œuvres Complètes*, Paris, 1819, vol. vii, p. 400). Rather faint praise, it must be confessed.

in the end the King of Prussia gave way to its arguments, and the interest on the Silesian loan was ever afterwards punctually paid.'

This is a very inaccurate summary. Firstly, the loan was for £250,000, not £80,000. The terms of the treaty do not either give or refuse to Frederick the power of attaching the debt by way of reprisals. So far was the King of Prussia from giving way to the arguments contained in the report of the English Law Officers and ever after paying the interest on the Silesian loan, that he caused a rejoinder to be prepared, and though this was never presented to the British Government, he withheld the payment of the last instalment of principal and the interest until the settlement of the dispute at the time of the signature of the Westminster Convention of January 16, 1756. The account above given by the Whewell Professor of International Law is evidently based on Ward.

9. *The History of England from the Accession of Anne to the death of George II (1702-60)*, by I. S. Leadam, 1909.

P. 427. A paragraph giving a fairly correct account of the matter. It is, however, not quite accurate to say that the last instalment of the capital was due in 1745, unless January 1745 o. s. is to be understood. The statement that Frederick at the beginning of 1753 'stopped £30,000 out of £45,000 due and applied it as compensation to Prussian shipowners whose vessels had been seized in October, 1745, by English cruisers for carrying contraband of war' is likewise inaccurate. A foot-note shows that this is based on Carlyle. Frederick stopped the whole £45,000, but did not compensate the Prussian shipowners until after the signature of the Declaration of January 16, 1756, by which the King of England undertook to pay £20,000 'en extinction de toute Pretension de sa dite Majesté ou de ses Sujets à la Charge de sa Majesté Britannique, sous quelque Pretexte que ce puisse être'. And it was this sum of £20,000 that Frederick distributed by way of compensation to the Prussian shipowners and owners of cargo, *pro rata* of their claims admitted by the Prussian commission of inquiry.

10. *Sea Law and Sea Power*, by Thomas Gibson Bowles, M.P., 1910.

P. 6. 'For another century nothing was heard of the free ship free goods doctrine. Then Frederick the Great of Prussia found it convenient for his purpose. By mingled force and fraud he had acquired from Maria Theresa the rich prey of Upper and Lower Silesia, and therewith the Silesian silver mines mortgaged with a debt to English merchants of £250,000 and charged with the annual interest thereon of £75,000 which by the Treaty of Breslau of 1742 he had undertaken to

pay to those same merchants. Now, in the war between England on the one side and France and Spain on the other, which was concluded by the Peace of Aix-la-Chapelle in 1748, Prussian ships had been captured and condemned in British Prize Courts for infractions of neutrality. In 1752, therefore, Frederick sent a memorial to the Duke of Newcastle, Secretary of State in Mr. Pelham's administration, denying the right to search, detain, or capture neutral ships at sea on the ground that they carried enemy's property; denying equally the competency of Prize Courts to decide on the legality of such captures; and finally announcing that, since Prussian ships had been thus dealt with, he had attached the moneys due to the British merchants, and would discontinue the payment to them of the £75,000 interest on the Silesian loan. Thus again the doctrine of free ship free goods was advanced; and this time not merely as a request or a desire, but as a claim of right, backed and enforced by the arbitrary confiscation of the private property of the English merchants. The proceeding was as Prussian as the Dutch proceeding of a century earlier had been Dutch. But neither Dutch appeal nor Prussian insolence could then find an open ear in England. For Mr. William Pitt the elder was a member of the English Ministry and inspired it with his spirit. The Duke of Newcastle's reply to the Prussian minister was declared by Montesquieu to be a *réponse sans réplique*. The Prussian minister abandoned the principle of free ship, free goods, and his master Frederick resumed payment of the interest on the Silesian loan.'

Some of the inaccuracies in this passage seem to be derived from the *Gentleman's Magazine* and Sir Henry Maine. But not all. The calculation that interest at 7 per cent. per annum on £250,000 amounts to £75,000 a year is new. No Prussian ship was 'condemned'; it appears from the Prussian List A that all the ships of Prussian subjects alleged to have been captured were released. The statement that 'the Prussian minister abandoned the principle of free ship free goods' is perhaps based on Andrié's letter of May 29/June 9, 1747, to Frederick, quoted in the Report of the Law Officers; in which he informs the King that 'Your Majesty's subjects ought not to load on board neutral ships any goods really belonging to the enemies of England'. An abandonment of the principle by the Prussian Minister could alone have validity if it were officially declared to the British Government, and *after* the presentation of the Prussian case in November 1752. There is no trace anywhere of such an official communication. As for Frederick's alleged resumption of payment of interest on the loan after receipt of Newcastle's reply, that is equally unhistorical.

11. Basil Williams, *The Life of William Pitt, Earl of Chatham*, 1913. Vol. i. p. 277, foot-note.

'After Frederic's conquest of Silesia he had taken over a Silesian loan advanced by England, but had refused to pay the instalments due, until some grievances for captured ships had been redressed by the Admiralty. By the treaty of 1756 Frederick gained most of what he had been contending for.'

The endeavour to condense the main facts into a single short paragraph has betrayed the author into several slight errors. The loan was not advanced by England, but by English capitalists. It was from the British Government that Frederick claimed redress, not from the Admiralty nor from the Admiralty Courts. What he obtained in the way of compensation was not in virtue of the treaty, but of the Declaration which formed no part of it. The British Cabinet had expressly stipulated that this question should be excluded from mention in the treaty of Westminster.

12. Philip C. Yorke: *Life and Correspondence of Philip Yorke, Earl of Hardwicke*, 1913. Vol. ii, p. 7.

'Frederick, on the plea of British depredations upon Prussian vessels, seized forcibly a mortgage of £250,000 upon Silesian mines, being a debt incurred originally by the Emperor Charles VI in 1734, and now the property of British subjects.'

From the context it appears that the year 1752 or 1753 is indicated as the date of the occurrence here alluded to. It is not quite correctly stated. Of the original sum of £250,000 lent by British capitalists in January 1734 (o.s.) only £45,000 remained unpaid by Frederick at that time. The statement that the loan was secured on Silesian mines seems to be an echo of the statement in the *Gentleman's Magazine* for August 1734 (see No. 1 above).

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